

**AGREEMENT FOR AIRPORT SHUTTLE BUS SERVICE
BETWEEN THE CITY OF SAN JOSE
AND VEOLIA TRANSPORTATION SERVICES, INC.**

This Agreement is entered into as of September 1, 2013 between the City of San José, a municipal corporation ("City" or "Airport"), and Veolia Transportation Services, Inc., a Maryland corporation authorized to do business in California ("Contractor" or "Operator").

RECITALS

1. City issued a Request for Proposal ("RFP") 12-13-14 for Airport Shuttle Bus Service on March 28, 2013; and
2. Contractor has the necessary expertise and skill to perform such services and Contractor's proposal can best meet City's needs;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1 AGREEMENT DOCUMENTS

The documents forming the entire Agreement between City and Contractor shall consist of this Agreement including:

- Exhibit A - Definitions
- Exhibit B - Scope of Services
- Exhibit C - Compensation
- Exhibit D - Insurance Requirements
- Exhibit E - ACDBE Requirement
- Exhibit F - Labor Compliance Addendum
 - Exhibit F-1, City Classification Determination
 - Exhibit F-2, Labor Compliance Workforce Statement
 - Exhibit F-3, Labor Compliance Fringe Benefit Statement
 - Exhibit F-4, Employee Work Environment & Labor Peace Questionnaire
- Exhibit G - License for Use of Premises
- Exhibit H - Airport Security Measures
- Exhibit I - Hazardous Material Handling
- Exhibit J - Description of Service Area
- Exhibit K - Shuttle Bus Schedule and Headways
- Exhibit L – Notice of Exercise of Option to Extend Agreement

In the event any discrepancies or inconsistencies between the provisions of this Agreement and any of the above-referenced documents arise, the provisions of this Agreement will prevail.

This Agreement and the Exhibits set forth above, contain all of the agreements, representations and understandings of the parties hereto, and supersede and replace any previous understandings, commitments, or agreements, whether oral or written.

2 DEFINITIONS

Each reference in the body of this Agreement to specific terms or phrases set forth in Exhibit A shall have the specific meanings and/or contain the respective express information set forth below. To the extent there is a conflict between the information in Exhibit A and any more specific provision of this Agreement, such more specific provision shall control.

3 TERM OF AGREEMENT

3.1 Initial Term

The term of this Agreement is from September 1, 2013 to August 31, 2017, inclusive, subject to the provisions of Section 11 and subsection 3.2.

3.2 Options

The City, at its sole discretion, reserves the right to extend the term of this Agreement for up to six (6) additional one-year option periods (the "Option Periods"), based upon the same conditions of the Initial Term, subject to adjustments for compensation as set forth in Exhibit C. City shall provide Contractor prior written notice in the Form of Exhibit L of its intention to exercise its option no less than thirty (30) days prior to the end of the then current Term.

3.3 No Waiver

City's agreement to extend the term of this Agreement is not a waiver of the "time is of the essence" provision in Section 4.

4 SCOPE OF SERVICES

Contractor's services must be completed according to the schedule set out in the attached Exhibit B, entitled "Scope of Services." Time is of the essence in this Agreement.

5 ADDITION OR DELETION OF SCOPE OF SERVICES

The Airport at its discretion reserves the right to add or delete areas designated for shuttle bus service and/or scope of services. The Project Manager shall notify the Contractor in writing thirty (30) calendar days prior to any changes in service areas. Upon written notification by the Project Manager to the Contractor of an expansion or reduction in the contracted shuttle bus services, the Contractor will adjust their pricing accordingly and

present to the Project Manager for approval. Any and all changes in work scope will require a written response from Contractor addressing changes in pricing.

6 COMPENSATION

City shall pay Contractor an amount not to exceed Sixteen Million One Hundred Fifty Five Thousand Two Hundred Forty Seven dollars and 51 cents (\$16,155,247.51) for the initial four (4) year term of the Agreement for Contractor's services. The terms, rate and schedule of payment are set forth in the attached Exhibit C, entitled "Compensation."

7 TAXES, FEES AND CHARGES

Operator shall pay before delinquency and without notice or demand, any and all taxes, assessments, fees, liens, charges or penalties which shall be levied, imposed or assessed against Operator, Operator's property, Operator's interest in the Airport Shuttle Bus operations or assets (including any imposition or possessory interest taxes, if any), or for which Operator may become liable under the provisions of this Agreement. Any such payment made under this Section shall not reduce the amount of any sum or sums that is required to be paid by Operator to City under the provisions of this Agreement.

7.1 Contest of Tax

In the event that Operator desires in good faith to contest or review by appropriate legal or administrative proceedings any tax, fee, lien or other charge specified under the provisions of this Section, Operator shall give City prompt written notice of its intention to do so prior to the delinquency of any City tax, fee, lien or charge, or within the applicable time period allowed by law as to any other tax, fee, lien or charge. Operator may withhold payment of the tax being contested if, but only if, nonpayment is permitted during the pendency of such proceedings without the foreclosure of any lien or the imposition of any fine or penalty. The contest shall be prosecuted to completion (whether or not this Agreement has expired or terminated in the interim) without delay. Within ten (10) days or the applicable time period allowed by law after the final determination of the amount due from Operator with respect to any contested tax, fee, lien or other charge, whichever is sooner, Operator shall pay the amount so determined to be due, together with all costs, expenses and interest (whether or not this Agreement has expired or terminated). The failure to pay any tax, fee, lien or charge under this Section shall constitute a default under this Agreement, and the obligation to pay the same shall survive the termination of this Agreement.

7.2 Payment by City

If Operator fails to pay any tax, assessment, fee, lien or charge required by this Section to be paid by Operator, City may, but is not obligated to, on five (5) days'

prior written notice to Operator, pay, discharge or adjust such tax, assessment, fee, lien or charge for Operator's benefit. In such event, Operator, on receipt of written demand of City, shall reimburse City promptly for the full amount paid by City in paying, discharging or adjusting such tax, assessment, fee, lien or charge together with interest thereon from its due date at the maximum interest rate then allowed by law until paid. Any receipt showing payment by City shall be prima facie evidence that the amount of such payment was necessary and reasonable and made by City on Operator's behalf.

7.3 Tax – Hold Harmless

Operator agrees to protect, defend, indemnify and hold harmless City from and against any expense or damage resulting in whole or in part, directly or indirectly, from any contest of tax or proceeding initiated by Operator. Further, Operator shall protect, defend, indemnify and hold City, including the Airport, free and harmless from any liability, loss or damage resulting from any taxes, assessments, fees, liens or charges or penalties required by this Agreement to be paid by Operator and from all interests, penalties and other sums imposed thereon and from any proceedings to enforce collection of any such taxes, assessments, fees, liens or charges or penalties.

8 LABOR COMPLIANCE

Contractor and all subcontractors shall pay those employees performing work related to this Agreement those specified wage rates as set forth in Exhibit F ("Labor Compliance Addendum ") and shall meet the documentation and reporting requirements set forth therein.

9 LICENSE FOR USE OF PREMISES

To assist Operator in the performance of its obligations under this Agreement, City has authorized Operator to use certain space on the Airport pursuant to the License for Use of Airport Premises (Exhibit G) attached and incorporated into this Agreement. Operator's rights and obligations with respect to such space are governed by that License Agreement.

10 AIRPORT MAINTENANCE AND REPAIRS

At all times during the term of this Agreement and without notice to Operator, City and its agents, contractors, employees and officers shall have the right to perform the following:

Install, construct, maintain, repair, replace and use any and all public utility lines and pipes, including, without limitation, all sewer, drainage, water, irrigation, electrical and fuel lines, and any appurtenances thereto, either on, above, or below the surface of any part of the Airport;

Inspect, alter or repair any part of the Airport that the Director may deem expedient or desirable for the proper enforcement of the terms and conditions of this Agreement or for the operation of the Airport; and

Engage in any other action which the Director deems reasonably necessary to administer the obligations of the City under this Agreement or by law.

10.1 Alterations, Maintenance and Repairs

Subject to the provisions of Section 12, City shall perform all alterations, maintenance and repairs to the Airport and the Service Area, but shall have no responsibility or obligation with regard to the premises covered by the License Agreement (Exhibit G).

10.2 Destruction of Airport

City shall determine in its sole discretion whether to repair any damage to the common areas and facilities of the Airport. If the Service Area is totally or substantially damaged, or City cannot complete the repair or restoration within six (6) months after the commencement date of repair or restoration, City may, at its option, give Operator notice of its intention to terminate this Agreement on a specified date.

10.3 Limitation on City's Liability

Except as otherwise provided or permitted by Law, City shall not be liable for, and Operator waives all claims and causes of action for, any liability, injury, damage or loss resulting, in whole or in part, directly or indirectly, from the installation of City improvements or equipment or from the interruption of use in connection with the furnishing of any of the services to the Service Area or by the making of necessary repairs or improvements to the Service Area.

11 TERMINATION

11.1 Termination for Convenience

City shall have the right to terminate this Agreement, without cause, by giving not less than thirty (30) days' written notice of termination.

11.2 Termination for Default

If Contractor fails to perform any of its material obligations under this Agreement, in

addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice.

11.3 Termination Authority

The Director of Finances ("Director") is empowered to terminate this Agreement on behalf of City.

11.4 Consequences of Termination

In the event of termination, Contractor shall deliver to City copies of all reports, documents, and other work performed by Contractor under this Agreement, and upon receipt thereof, City shall pay Contractor for services performed and reimbursable expenses incurred to the date of termination.

12 INDEMNIFICATION

12.1 Operator's Indemnification to City

Operator, for and on behalf of its representatives, contractors, directors, officers, employees and agents, covenants and hereby agrees to indemnify, defend, protect and hold harmless City, its officers, employees, contractors and agents, from and against any and all claims, demands, damages, obligations, liabilities, losses, costs, expenses, penalties, suits or judgments, at any time received, incurred or accrued by City, its officers, agents, employees, contractors or members of the public using Airport facilities, arising out of or resulting in whole or in part from any act (or failure to act) of Operator, its officers, employees, contractors, agents, permittees or invitees, or which results from their noncompliance with any Laws respecting the condition, use, occupation or safety of the Airport, Service Area or the Terminals, or any part thereof, or which arises from Operator's Services, or which arises from Operator's failure to do anything required under this Agreement, except as may arise from the sole active negligence or the sole willful misconduct of City, its officers, employees or agents. City's right to full indemnity hereunder shall arise notwithstanding that principles of joint, several or concurrent liability or comparative negligence might otherwise impose liability on City pursuant to statutes, ordinances, regulations or other Laws. This Section shall survive termination of this Agreement.

12.2 Operator's Assumption of Risk

Operator's Assumption of Risk in Relation to City. Operator agrees to and covenants that it shall voluntarily assume any and all risk of loss, damage or injury to the person or property of Operator, its directors, officers, employees, agents, and contractors which may occur in, on, or about the Service Area, the Terminals, or the Airport at any time and in any manner, except such loss, injury, or damage as may be caused by the sole active negligence or the sole willful misconduct of City, its officers, employees or agents. The indemnification obligations of Operator shall

include the obligation of Operator to defend, indemnify, protect and hold harmless City, its officers, agents or employees, from and against fines, costs, claims, damages, obligations, suits, judgments, penalties, proceedings, causes of action, losses, liabilities or costs arising under the Americans With Disabilities Act of 1990, which arise from Operator's activities under this Agreement.

Operator's Assumption of Risk in Relation to City Companies. Operator agrees to and covenants that it shall voluntarily assume any and all risk of loss, damage or injury to the person or property of Operator, its directors, officers, employees, agents, and contractors which may occur in, on, or about the Service Area, the Terminals, or the Airport at any time and in any manner, except such loss, injury, or damage as may be caused by the sole active negligence or the sole willful misconduct of the City Companies, their officers, employees or agents. The indemnification obligations of Operator shall include the obligation of Operator to defend, indemnify, protect and hold harmless the City Companies, their officers, agents or employees, from and against fines, costs, claims, damages, obligations, suits, judgments, penalties, proceedings, causes of action, losses, liabilities or costs arising under the Americans With Disabilities Act of 1990, which arise from Operator's activities under this Agreement.

12.3 Damage by Operator

If Operator's employees cause any injury, damage or loss to the Shuttle Buses, the Service Area or elsewhere at the Airport, Operator shall repair such injury, damage or loss at its sole cost and expense at City's direction and with City's prior approval. City reserves the right to perform such repairs and bill Operator for and deduct such costs from any compensation then due and owing to Operator. The rights of City as set forth in this Section 12 are not in derogation of any right of City to be indemnified by Operator for any such injury, damage or loss.

If Operator's employees cause any injury, damage or loss to the property of any of the Parking Facilities or elsewhere at the Airport, Operator shall repair such injury, damage or loss at its sole cost and expense at the direction of the City and with the City prior approval. The City reserves the right to perform such repairs and bill Operator. The rights of the City as set forth in this Section 12 are not in derogation of any right of the City to be indemnified by Operator for any such injury, damage or loss.

13 SECURITY MEASURES

13.1 Indemnification of City

Operator covenants that it shall indemnify and hold harmless City from and against, and agrees to pay or reimburse City for, any fine levied by the United States Federal Aviation Administration against City for any breach of federal airport security regulations caused by or attributable to Operator or its directors, officers, employees or agents. During the Term, Operator shall observe all applicable

federal, state, and City laws and procedures on the observation of security at airports.

13.2 Airport Rules and Regulations

Operator shall faithfully observe and comply with all rules and regulations and all reasonable modifications thereof and additions thereto from time to time as may be promulgated by the Director on City's behalf.

13.3 Security Measures

City shall be solely responsible for instituting and carrying out specific security measures in the Service Area where Operator is authorized to operate. Such security measures are attached as EXHIBIT H. Operator, in performing its Services at the existing International Arrival (FIS) Facility, shall observe all security rules and regulations.

13.4 City's Right to Implement or Change Security Measures

Operator understands and acknowledges that City reserves the right to implement or change security measures that may limit public access to the Service Area, Airport or the Terminals. In such event, Operator waives all rights against City for such limitation, and City shall not be liable to Operator for any amount, including compensation.

13.5 Compliance with FAA/TSA Directives

Operator further agrees that all or a portion of its operations hereunder may be temporarily or permanently reduced or terminated if the FAA/TSA requires that all or a portion of the Service Area must be removed from the Airport and that City may terminate this Agreement immediately to comply with the FAA/TSA's directive. In such event the Director is authorized, on behalf of City, to take all action necessary to comply with such requirement, including without limitation, terminating this Agreement.

14 PERFORMANCE BOND

Operator has provided City with a Performance Bond or Letter of Credit in the amount of Five Hundred Thousand Dollars (\$500,000). City shall have the right to draw against the faithful performance bond or letter of credit in the event of a breach or default by Operator or failure of Operator to fully perform any obligation hereunder. Within five (5) days of receipt of notice from City, Operator shall renew or replace such sums of money as shall bring the faithful performance bond or letter of credit current and failure to do so shall constitute a Default under this Agreement.

15 INSURANCE REQUIREMENTS

15.1 Required Insurance Coverage

Contractor agrees to have and maintain the policies set forth in EXHIBIT D, entitled "Insurance Requirements," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Risk Manager of the City of San Jose as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. Contractor agrees to provide City with a copy of said policies, certificates and/or endorsements before work commences under this Agreement.

15.2 Waiver of Subrogation

City and Operator hereby mutually agree that so long as their respective insurance carriers concur, any fire and extended coverage insurance policies carried on properties which are the subject of this Agreement shall include a waiver of subrogation against the other party hereto, provided that such agreement applies only to subsequent loss.

16 GRANT AGREEMENT COVENANTS

Operator acknowledges that City is subject to Federal Grant Agreement obligations as a condition precedent to the grant and receipt of federal funds for improvements to the Airport, and, accordingly, Operator, for and on behalf of its representatives, successors and assigns, as part of the consideration hereof, covenants and agrees to be bound by the following covenants provided by the Federal Aviation Administration, as they may apply to Operator:

16.1 Operator for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on any areas occupied or utilized by Operator and described in this Agreement for a purpose for which a Department of Transportation (DOT) program or activity is extended or for another purpose involving the provision of similar services or benefits, Operator shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations (CFR), DOT, Subtitle A, Office of the Secretary, Part 21 Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

16.2 Operator for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected

to discrimination in the use of the facilities; (2) that in the construction of any improvements on, over, or under any areas occupied by Operator and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (3) that Operator shall use any areas occupied by Operator in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as the Regulations may be amended.

- 16.3** That in the event of breach of any of the above nondiscrimination covenants, City shall have the right to terminate this Agreement and to reenter and repossess any areas occupied or utilized by Operator and the facilities thereon, and hold the same as if said Agreement had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed including expiration of appeal rights. Operator shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof. And it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; provided that Operator may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.
- 16.4** Non-compliance with subsection 16.3, above, shall constitute a material breach thereof, and in the event of such non-compliance, City shall have the right to terminate this Agreement without liability therefore or, at the election of the City or the United States, either or both the Governments shall have the right to judicially enforce section 16, subsections 16.1, 16.2 and 16.3 above;
- 16.5** Operator agrees that it shall insert the above five (5) provisions of this Section in any agreement by which Operator grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public in the Service Area herein authorized.
- 16.6** Operator assures that it will comply with pertinent statutes, executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from federal assistance. This subsection 16.6 obligates Operator or its successors for the period during which federal assistance is extended to the Airport, except where federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, this subsection 16.6 obligates Operator or any transferee for the

longer of the following periods: (a) the period during which the property is used by City or any transferee for a purpose for which federal assistance is extended, or for any purpose involving the provision of similar services or benefits; or (b) the period during which City or any transferee retains ownership or possession of the property. In the case of Operator or its successors, this subsection 16.6 binds the Operator and its successors from the bid solicitation period through the completion of the Agreement term.

16.7 City reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or view of Operator, and without interference or hindrance.

16.8 City reserves the right, but shall not be obligated to Operator, to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Operator in this regard.

16.9 This Agreement shall be subordinate to the provisions and requirements of any existing or future Agreement between City and the United States, relative to the development, operation or maintenance of the Airport.

16.10 There is hereby reserved to City, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Airport. This public right of flight shall include the right to cause in the airspace any noise inherent in the operation of any aircraft used for navigation or flight through the airspace or landing at, taking off from, or operation on the Airport.

16.11 Operator agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the Airport, or in the event of any planned modification or alteration of any present or future building or structure situated at the Airport.

16.12 Operator, by accepting this Agreement expressly agrees for itself, its successors and assigns, that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on any areas occupied or utilized by Operator to a height above the mean sea level that would exceed FAR Part 77 standards or elevations affecting the Airport navigable airspace. In the event the aforesaid covenants are breached, City reserves the right to enter upon any area utilized by Operator and to remove the offending structure

or object and cut the offending tree, all of which shall be at the expense of Operator.

16.13 Operator, by accepting this Agreement, agrees for itself, its successors and assigns that it will not make use of the Airport in any manner which might interfere with the landing and taking off of aircraft from San Jose International Airport or otherwise constitute a hazard. In the event this covenant is breached, City reserves the right to enter upon any areas used or occupied by Operator and cause the abatement of such interference at the expense of Operator.

16.14 It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. Section 1349[a]).

16.15 This Agreement and its provisions shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of Airport or the exclusive or non-exclusive use of Airport by the United States during the time of war or national emergency.

17 MODIFICATIONS FOR GRANTING FAA FUNDS

In the event that the Federal Aviation Administration requires, as a condition precedent to granting of funds for the improvement of the Airport, modifications or changes to this Agreement, Operator agrees to consent in writing upon the request of City to such reasonable amendments, modifications, revisions, supplements or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required to enable City to obtain Federal Aviation Administration funds, provided that in no event shall such changes materially impair the rights of Operator hereunder. A failure by Operator to so consent shall constitute a breach of this Agreement.

18 WAIVER

Contractor agrees that City's waiver of any breach or violation of any provision of this Agreement shall not be deemed to be a waiver of any other provision or a waiver of any subsequent breach or violation of the same or any other provision. City's acceptance of the performance of any of Contractor's services will not be a waiver of any provision of this Agreement.

18.1 Waiver as to City

Operator, as a material part of the consideration to City under this Agreement, hereby specifically waives any and all claims or causes of action which it may now or hereafter have against City, its officers, employees, contractors or agents for any loss, injury or damage for any loss or injury or damage to the goods, wares, product, equipment or other property of or business operations (including without limitation any interruption thereof), and for injuries to or death of any persons in or about the Airport, from any cause or condition (including from any act or omission of any Subcontractor of Operator or other occupant or user of the Service Area or Terminals at the Airport) arising at any time, except as shall arise from the sole active negligence or the sole willful misconduct of City, its officers, employees or agents, and notwithstanding that joint, several or concurrent liability or comparative negligence might otherwise impose liability on City or its officers, agents or employees.

Operator, as a material part of the consideration to the City under this Agreement, hereby specifically waives any and all claims or causes of action which it may now or hereafter have against the City, their officers, employees, contractors or agents for any loss, injury or damage for any loss or injury or damage to the goods, wares, product, equipment or other property of or business operations (including without limitation any interruption thereof), and for injuries to or death of any persons in or about the Airport, from any cause or condition arising at any time, except as shall arise from the sole active negligence or the sole willful misconduct of City, its officers, employees or agents, and notwithstanding that joint, several or concurrent liability or comparative negligence might otherwise impose liability on City or its officers, agents or employees.

In addition to the foregoing, save and except as arises out of the active negligence or the willful misconduct of City, its agents, contractors, employees and officers, Operator specifically waives any and all claims or causes of action which it may now or hereafter have against City, its agents, contractors, employees and officers:

For loss, injury or damage sustained by reason of any deficiency, impairment, or interruption of any water, electrical, gas, plumbing, telephone, or drainage, sewer service or system serving any portion of the Service Area or the Airport, whether or not installed by City;

For any loss, injury or damage arising or resulting from any act or omission of any tenant, licensee, sublicense, operator or other occupant of any portion of the Airport, or any person who uses any portion of the Airport with or without the authorization or permission of City; or

For any loss or damage to the property of, or injury or damage to, Operator, its agents, contractors, directors, employees, officers, or representatives or any other person, from any cause or condition arising at any time on account of Operator's use or occupancy of the Airport or Service Area, or Operator's operations on any part thereon.

19 INDEPENDENT CONTRACTOR

Contractor, in the performance of this Agreement, is an independent contractor. Contractor shall maintain complete control over all of Contractor's employees, any subcontracting subcontractors, and Contractor's operations. Neither Contractor nor any person retained by Contractor may represent, act, or purport to act as the agent, representative or employee of City. Neither Contractor nor City is granted any right or authority to assume or create any obligation on behalf of the other.

20 COMPLIANCE WITH LAWS

Contractor shall comply with all applicable laws, ordinances, codes and regulations (collectively, "laws") of the federal, state and local governments, including without limitation, any and all laws specified elsewhere in this Agreement.

21 CONFLICT OF INTEREST

Contractor shall avoid all conflict of interest or the appearance of conflict of interest in performance of this Agreement.

22 NONDISCRIMINATION

Contractor agrees that there shall be no discrimination against, or segregation of, any person, on account of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, national origin, marital status, or family status, in connection with or related to the performance of this Agreement.

22.1 The requirements of 49 CFR Part 23, regulations of the U.S. Department of Transportation, applies to this concession. It is the policy of the City of San José to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. The City's Airport Concession Disadvantaged Business Enterprise requirements are set out in Exhibit E to this agreement.

22.2 In order to facilitate the City's efforts to meet its ACDBE participation targets through race-neutral means, Contractor is requested to submit the following information: (1) the names and addresses of ACDBE firms and suppliers that will participate in the concession, (2) a description of the work that each ACDBE will perform; and (3) the dollar amount of the participation.

23 GIFTS

23.1 Prohibition on Gifts

Contractor acknowledges that Chapter 12.08 of the San Jose Municipal Code prohibits City's officers and designated employees from accepting gifts as defined in Chapter 12.08.

23.2 No Offer

Contractor agrees not to offer any City officer or designated employee any gift prohibited by Chapter 12.08.

23.3 Breach of Agreement

Contractor's offer or giving of any gift prohibited by Chapter 12.08 will constitute a material breach of this Agreement. In addition to any other remedies City may have in law or equity, City may terminate this Agreement for such breach as provided in Section 24.3 of this Agreement.

24 DEFAULT BY OPERATOR

24.1 Conditions of Default

In addition to the other defaults specified in this Agreement, the Director may determine that Operator is in default under this Agreement if:

Operator fails to promptly commence Airport Shuttle Bus services at the Airport on the Commencement Date; or

Operator fails duly and punctually to make any payment required hereunder, when due to City; or

Operator's general assignment of its assets for the benefit of Operator's creditors except for usual and customary credit and security arrangements entered into with banks or other commercial lending institutions; or

Operator's assignment hereunder in violation of the provisions of this Agreement, whether voluntary or by operation of law; or Operator's failure to provide Services, or to provide the Services in a timely manner as specified in **Exhibit B** for any period of time; or

Operator becomes insolvent, or takes the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under the Federal bankruptcy laws, or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of any or substantially all of its property; or

A petition under any part of the Federal bankruptcy Laws, or an action under any present or future insolvency Law or statute, is filed against Operator and shall not be dismissed within thirty (30) days after the filing thereof; or

The interest of Operator under this Agreement shall be transferred, by reason of death, operation of law, assignment, sublease or otherwise, to any other person, firm or corporation; or

The determination by the Director that there is a reasonable probability that Operator's financial condition is impaired and Operator cannot provide adequate assurances that any conditions giving rise to the impairment of financial condition can be removed within thirty (30) days of receipt of City's demand for same; or

Operator fails to keep, perform and observe each and every other promise, covenant and agreement set forth in this Agreement, and such failure shall continue for a period of more than ten (10) days after delivery by Director or of a written notice of such breach or default, except where fulfillment of its obligation requires activity over a period of time, in excess of then (10) days and Operator shall have commenced in good faith to perform whatever may be required for fulfillment within ten (10) days after receipt of notice and continues such performance without interruption except for causes beyond its control; or

Any representation or warranty made by Operator hereunder or under any instrument delivered in connection herewith shall have been false or misleading in any material respect as of the date on which such representations or warranty was made; or

The occurrence of a default under the License Agreement (Exhibit G), which has not been cured by Operator in accordance with the terms of the License Agreement.

24.2 City's Remedies

Upon the occurrence of a Default under this Agreement, City shall have the following rights and remedies, in addition to all other rights and remedies provided by law, to which City may resort cumulatively, or in the alternative.

24.3 Termination

Upon any default, City shall have the right to terminate this Agreement by giving Operator written notice of termination in which event this Agreement shall terminate on the date set forth for termination in such notice. Any termination under this paragraph shall not relieve Operator from the payment of any sums then due to City, or from any claim for damages or fees previously accrued or then accruing against Operator. In no event shall City have any obligation to Operator, financial or otherwise, as a result of the termination of this Agreement following a default, including the right to withhold compensation and other fees as they become due.

In the event Operator ceases to provide Services to the Service Area, this Agreement shall not terminate, unless City and the give Operator written notice of their election to terminate this Agreement. No act by or on behalf of City intended to mitigate the adverse effect of such breach shall constitute a termination of Operator's right to render Services to the Service Area, unless City give Operator written notice of termination.

24.4 Damages

In the event City elect to terminate this Agreement, Operator shall pay to City all amounts owing at the time of termination on account of Operator's breach of any term, covenant or condition of this Agreement including but not limited to unpaid fees plus interest thereon on all such amounts from the date due until paid at the rate of the greater of one percent (1%) per month or the maximum rate then allowed by law; and any other amount to compensate City fully for all detriment proximately caused by Operator's failure to perform its obligations hereunder or which in the ordinary course would likely result therefrom.

24.5 Liquidated Damages

Operator understands and agrees that one of City's primary goals in granting this Agreement is to ensure that customer service provided to the traveling public using the Airport Shuttle Bus services at the Airport is of the highest caliber and is consistent with the image that the City, the Airport and want to project to their users and visitors. Operator further agrees that City will suffer damage if Operator fails to meet these standards and that, due to the nature of certain breaches, the actual damage to the City would be impractical or very difficult to remedy.

OPERATOR, AND CITY AGREES THAT THE AMOUNTS SET FORTH IN SUBSECTIONS 24.6 AND 24.7 BELOW SHALL BE PAID TO CITY AS LIQUIDATED DAMAGES IF OPERATOR BREACHES THE PERFORMANCE STANDARDS SPECIFIED IN SUCH SUBSECTIONS 24.6 AND 24.7. THE PARTIES ACKNOWLEDGE THAT CITY'S ACTUAL DAMAGES IN THE EVENT OF A BREACH OF SUCH PERFORMANCE STANDARDS WOULD BE IMPRACTICAL OR VERY DIFFICULT TO DETERMINE. THEREFORE, BY PLACING THEIR SIGNATURES BELOW, THE PARTIES ACKNOWLEDGE THAT THE AMOUNTS SET FORTH IN SUBSECTIONS 24.6 AND 24.7 BELOW HAVE BEEN AGREED UPON AS THE PARTIES' REASONABLE ESTIMATE OF CITY'S DAMAGES IN THE EVENT OF SUCH BREACH. CITY'S ACCEPTANCE OF ANY LIQUIDATED DAMAGES AS A RESULT OF A PERFORMANCE STANDARD BREACH SHALL NOT PREVENT CITY FROM EXERCISING ANY OTHER RIGHT OR REMEDY FOR DEFAULT AVAILABLE TO CITY UNDER THIS AGREEMENT

24.6 Performance Standard Breaches

The following specified breaches shall be referred to as "Performance Standard Breaches". Operator agrees to pay to City the amount specified below as liquidated damages for the applicable breach.

No drivers for designated scheduled route	\$500.00 per occurrence
Passenger waiting for buses more than fifteen (15) minutes during normal operating hours	\$25.00 per occurrence
Passenger waiting for buses more than thirty (30) minutes during other than normal operating hours	\$100.00 per occurrence
Failure to respond to customer complaints within two (2) calendar days of complaint	\$25.00 per occurrence and \$25.00 for each 24-hour period thereafter
Number of complaints exceeds three (3) in any one calendar month period	Warning for first three (3) complaints, \$100.00 for 4 th complaint in calendar month, \$25.00 for each additional complaint per calendar month
Shuttle bus driver not in uniform with name plate display while operating bus at Airport	Warning for first violation per calendar month, \$25.00 per additional violation per calendar month
Shuttle bus driver failing to comply with the performance standards as set out in this Agreement or the RFP, including but not limited to on-time performance, announcement of stops, etc	Warning for first violation per calendar month, \$25.00 per additional violation per calendar month
Shuttle bus driver negligent in operating and handling of Shuttle Buses	\$25.00 per occurrence plus reimbursement by Operator for costs of repair work pursuant to Section exhibit B of this Agreement.
Any reports required by this Agreement submitted after the due dates	\$50.00 for each occurrence and \$50.00 for each 24-hour period thereafter until received.
Failure to make Shuttle Buses available,	\$25.00 per occurrence

24.7 Liquidated Damages for Delay in Commencement of Operations:

Operator acknowledges and understands that timely commencement of Airport Shuttle Bus services is of the essence and is a material consideration to City under this Agreement. Operator also acknowledges and understands that if Operator fails to commence Airport Shuttle Bus services at the Airport on the Commencement

Date, City, and the users of the Airport will be deprived of these essential transportation services, and such failure shall constitute a default under this Agreement. In the event of a delay in the commencement of services, City will suffer significant economic loss as a result of such delay, including less than bargained for service to Airport users and loss of patronage at the Airport, and actual damages which will result will be extremely difficult to ascertain. Therefore, City and Operator agree that if City accedes to a delay in commencement of services by Operator, Operator agrees to pay:

24.7.1 City as liquidated and agreed damages and not as a penalty the sum of Forty-Two Thousand Dollars (\$42,000) per day for each day that Operator fails to timely commence services from and after the Commencement Date; and

24.7.2 If City elects to terminate this Agreement due to Operator's delayed commencement of services, then City (in lieu of such liquidated damages) shall be entitled to all rights and remedies available to them hereunder and at law or in equity, including actual and consequential damages; provided, however, in no event shall total damages for delay in commencement of operations exceed the sum of Five Hundred Thousand Dollars (\$500,000).

24.8 Procedure for Declaring Performance Standard Breaches

Except as otherwise provided for in Exhibit F, Labor Compliance Addendum the determination as to whether Performance Standards have been met is at the reasonable discretion of the Director or his designee.

24.8.1 Upon determining the existence of a Performance Standard Breach, the Director shall issue a written notice to Operator of the occurrence of such breach and the City's claim for liquidated damages.

24.8.2 The notice of Performance Standard Breach shall become final unless the Director receives from Operator no later than ten (10) calendar days after the date of the notice of Performance Standard Breach is received by Operator, a written statement from Operator, with Operator's evidence that the breach did not occur. Director shall review such evidence and determine, in his reasonable discretion, whether Operator has demonstrated that the breach did not occur.

24.8.3 The Director shall review Operator's evidence as soon as reasonably possible after timely receipt of such evidence.

24.8.4 The Director shall render a decision sustaining or reversing the determination that a breach occurred and the claim for liquidated damages. A written notice of decision shall be delivered to the Operator.

24.8.5 If such written evidence is not received by the Director within ten (10) calendar days of the date of the notice of Performance Standard Breach, the Director's determination shall be final and the applicable liquidated damages shall be immediately due and payable.

24.8.6 Upon expiration of the period for Operator to deliver its evidence or upon Director's determination that a breach occurred after reviewing Operator's evidence as provided above, Operator agrees to immediately pay City the liquidated damages amount. Operator further agrees that Director may, at his option, deduct the amount of such liquidated damages from any deposit or performance guarantee provided by Operator, without further notice to Operator.

24.9 No Waiver By City

The acceptance of any fee or charge hereunder by City shall not be deemed to be a waiver of any preceding violation by Operator of any provision of this Agreement, other than the failure of Operator to pay the fee or charge so accepted, regardless of City's knowledge of such preceding or subsequent violation at the time of acceptance of such fee or the waiver of any other right or remedy allowed in law or in equity. The consent or approval by City to any act of Operator requiring City's approval shall not be deemed to waive or render unnecessary the need for City's consent to or approval of any subsequent similar act of Operator.

25 OPERATOR'S BREACH NOT WAIVED BY CITY'S ACTION

In the event of any breach of this Agreement by Operator, City may, at any time without notice and without any obligation to do so (implied or otherwise), and upon condition that it be for the account and at the expense of the Operator, and without a waiver of such breach, perform any act which if performed by Operator would otherwise cure the breach. If in so doing City is required or elects to pay any moneys or do any acts which will require the payment of any moneys or the incurring of any costs or expenses, Operator covenants to pay to City upon demand by City the sum or sums of money paid or incurred by City, together with interest at the maximum rate allowed by law plus costs and damages, as part of its rental fee due on the first (1st) day of the month which immediately follows City's demand therefore. The receipt showing payment by City

shall be prima facie evidence that the expense incurred was necessary and reasonable and that such expense was incurred by City on behalf of Operator.

26 HAZARDOUS MATERIALS – PROHIBITIONS AND RESTRICTIONS

Storage and disposal of Hazardous Materials on the Airport is strictly prohibited. Use of Hazardous Materials on the Airport is prohibited, except Operator may use hazardous Materials on the Airport only in a safe and prudent manner and in accordance with the requirements of all applicable Environmental Laws those kinds and quantities of Hazardous Materials which are commonly used in conducting the activities permitted under this Agreement, and for which no permit is required to be obtained from any regulatory agency under any Environmental Law.

Operator shall at all times comply with the provisions of this Agreement, including those provisions of **EXHIBIT I**, regarding Hazardous Materials.

27 REPRESENTATIONS AND WARRANTIES

Operator represents, warrants and covenants with respect to this Agreement and any amendment hereto as follows:

- 27.1** That Operator has the power and authority to enter into this Agreement with City, that the Board of Directors of Operator has by corporate resolution approved such power and authority to enter into this Agreement and bind Operator, or, if not a corporation, by its governing body as demonstrated to Director's satisfaction, that this Agreement shall be properly executed, delivered and performed by Operator and shall be binding upon Operator, and that the individual executing this Agreement is duly authorized to do so.
- 27.2** That there are no unresolved claims or disputes between Operator and City.
- 27.3** That there are no unresolved claims or disputes between Operator and the City.
- 27.4** That Operator shall furnish true and accurate financial statements, records, reports, resolutions, certifications, and other information as may be requested of Operator by City from time to time during the term of this Agreement.
- 27.5** That Operator is in compliance with all local, state and federal laws related to the Services.

27.6 That Operator possesses the necessary experience and qualifications to conduct the Services at the Airport.

27.7 That all information provided to City in connection with the award of this contract is true and correct in all material respects.

28 APPROPRIATION OF CITY FUNDS

This Agreement is subject to the fiscal provisions of Article XII of the Charter of the City of San Jose. Any charges for Services may accrue only after such expenditures have been approved in advance in writing by the Director. This Agreement will terminate without penalty (i) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (ii) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Agreement are no longer available. This Section shall control in the event of a conflict with any other provision of this Agreement.

29 DISQUALIFICATION OF FORMER EMPLOYEES

Contractor is familiar with Chapter 12.10 of the San Jose Municipal Code ("Revolving Door Ordinance") relating to the disqualification of City's former officers and employees in matters which are connected with their former duties or official responsibilities. Contractor shall not utilize either directly or indirectly any officer, employee, or agent of Contractor to perform services under this Agreement, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

30 CONFIDENTIAL INFORMATION

All data, documents, discussions or other information developed or received by or for Contractor in performance of this Agreement are confidential and must not be disclosed to any person except as authorized by City, or as required by law.

31 OWNERSHIP OF MATERIALS

All reports, documents or other materials developed or discovered by Contractor or any other person engaged directly or indirectly by Contractor to perform Contractor's services are City's property without restriction or limitation upon their use.

32 CONTRACTOR'S BOOKS AND RECORDS

32.1 Maintenance during Term

Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period

of four (4) years, or for any longer period required by law, from the date of final payment to Contractor pursuant to this Agreement.

32.2 Maintenance after Term

Contractor shall maintain all documents which demonstrate performance under this Agreement for a minimum period of four (4) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

32.3 Inspection

Any documents required to be maintained pursuant to this Agreement must be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Contractor shall provide copies of such documents to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Contractor's address indicated for receipt of notices in this Agreement.

32.4 Custody of Records

Where City has reason to believe that any of Contractor's documents relating to this Agreement may be lost or discarded due to dissolution, disbandment or termination of Contractor's business, City may, by written request by any of the above-named officers, require that custody of the Contractor's documents be given to City and that these documents be maintained in City Hall. City agrees to grant access to Contractor's documents to any party authorized by Contractor, Contractor's representatives, or Contractor's successor-in-interest.

33 ASSIGNABILITY

The parties agree that the expertise and experience of Contractor are material considerations for this Agreement. Unless specifically authorized by this Agreement, Contractor may not assign the performance of any obligation or interest under this Agreement without the prior written consent of City. Any attempt by Contractor to assign this Agreement, in violation of this Section, will be voidable at City's sole option.

Operator shall not subcontract any of its obligations under this Agreement without the prior written consent of the Director and all of the City Companies. In addition, Operator shall not otherwise assign, transfer, lease, license, convey, sell, hypothecate, or encumber by deed of trust or mortgage or otherwise, or pledge ("transfer") to any person ("proposed transferee") this Agreement or the Service Area, or any part thereof, or any rights or obligations of Operator hereunder, whether voluntarily or by operation of law. Any transfer in violation of the provisions of this Section shall be void and shall entitle City, at its option, to terminate this Agreement, and the

acceptance of compensation by Operator or any other fee or charge by City or the continuation of the use of the Airport by Operator or the proposed transferee shall not be deemed a waiver of City's right to terminate this Agreement on account of Operator's violation of this provision.

34 SUBCONTRACTORS

Contractor may not use subcontractors to perform any services authorized under this Agreement.

34.1 Authorized Subcontractors

Notwithstanding Section 33 (Assignability) above, Contractor may use designated subcontractors approved in advance by City in performing Contractor's services. Contractor must obtain City's prior written consent in order to change or add subcontractors. Contractor shall be responsible for directing the work of the approved subcontractors and for any compensation due to subcontractors. City assumes no responsibility whatsoever concerning such compensation.

34.2 Compliance with Agreement

Contractor shall ensure that Contractor's subcontractors comply with this Agreement. At City's request, Contractor shall require any or all of Contractor's subcontractors to sign an agreement with Contractor requiring compliance with this Agreement.

35 GOVERNING LAW

This Agreement must be construed, and its performance enforced under California law.

36 VENUE

In the event that suit is brought by either party to this Agreement, the parties agree that venue must be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

Contractor further agrees that in the event a lawsuit involving this Agreement is filed by City, Contractor will unconditionally accept the jurisdiction of a federal or state court located in Santa Clara County, California.

37 NOTICES

All notices and other communications required or permitted to be given under this Agreement must be in writing and must be personally served, or mailed, postage prepaid via U. S. mail, or sent via courier service, addressed to the respective parties as follows:

To City: Director of Finance
City of San Jose
200 East Santa Clara St.
San Jose, CA 95113

To Contractor: General Manager, San Jose Airport
Veolia Transportation Services, Inc.
1311 – A Airport Blvd.
San Jose, CA 95110

Notice will be effective on the date personally delivered or if sent by courier service, on the date of receipt. If mailed, notice will be effective three (3) days after deposit in the mail.

The parties may change their respective addresses in accordance with the provisions of this Section.

38 MISCELLANEOUS

38.1 Entire Agreement

This instrument contains all of the agreements and conditions entered into and made by and between the parties and may not be modified orally, or in any manner, other than by an agreement in writing signed by all the parties hereto or their respective successors-in-interest.

38.2 Survival of Provisions

If any part of this Agreement is for any reason found to be unenforceable, all other parts nevertheless remain enforceable.

38.3 Assignment

Subject to the provisions of Section 33 (Assignability), this Agreement binds and inures to the benefit of the parties and their respective successors and assigns.

38.4 Headings

The headings of the sections and exhibits of this Agreement are inserted for convenience only. They do not constitute part of this Agreement and are not to be used in its construction.

38.5 Consent

Whenever in this Agreement the approval or consent of a party is required, such approval or consent shall be in writing and shall be executed by a person having the express authority to grant such approval or consent.

38.6 Director's Consent

The Director shall act reasonably and in good faith in exercising any power to approve, disapprove or consent to any action of Operator pursuant to this Agreement, and the Director shall not arbitrarily or capriciously exercise any such power granted to the Director under this Agreement.

38.7 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

38.8 Force Majeure

Neither party shall be deemed to be in default on account of any boycott, riot, embargo, shortage of building materials, equipment or other acceptable substitute not reasonably contemplated by the party responsible for procuring the same, Acts of God (such as earthquake, to the extent not insured against or required under this Agreement), act of a public enemy, act of a superior governmental authority, major weather disturbance, rebellion, sabotage and any other circumstance of a magnitude a reasonable person would believe is beyond the reasonable control of either party to this Agreement.

38.9 Resolutions

Operator shall submit a copy of any corporate resolution, if requested by City, which authorizes any director or officer to act on behalf of Operator or which authorizes Operator to enter into this Agreement.

38.10 Severability

If a court of competent jurisdiction finds or rules that any Provision of this Agreement is void or unenforceable, the remaining Provisions of this Agreement shall remain in effect.

38.11 Successors and Assigns

The provisions of this Agreement shall, subject to the provisions of this Agreement concerning transfer, apply to and bind the successors and assigns of the parties hereto.

38.12 Time of Essence

Time is of the essence of this Agreement and each of its Provisions.

38.13 Operator not an Agent of City

Operator is not an agent, contractor or employee of City and nothing in this Agreement nor shall any action of Operator be construed in any way to constitute Operator as an agent, contractor or employee of City for any purpose.

38.14 Joint and Several

If there be more than one Operator designated in or signatory to this Agreement, the obligations hereunder imposed upon Operator shall be joint and several; and the term Operator as used herein shall refer to each and every of said signatory parties, severally as well as jointly.

38.15 Material Considerations

Each and every term, condition, covenant and provision of this Agreement is and shall be deemed to be a material part of the consideration for City's entry into this Agreement, and any breach hereof by Operator shall be deemed to be a material breach. Each term and provision of this Agreement performable by Operator shall be construed to be both a covenant and a condition.

38.16 Exhibits and Addenda

All exhibits and addenda referred to herein, and any exhibits or schedules which may from time to time be referred to in any duly executed amendment thereto, are by such reference incorporated herein and shall be deemed a part of this Agreement as if set forth fully herein.

38.17 No Assumption

The review, approval, inspection, examination or consent of City of or to any item to be reviewed, approved, inspected, examined or consented to by City shall not constitute the assumption of any responsibility by City for either accuracy or sufficiency of any item or the quality or suitability of such item for its intended use, but rather for the sole purpose of protecting City's interests. No third parties, including Operator or persons claiming under Operator, shall have any rights hereunder resulting therefrom or otherwise.

38.18 Hold Harmless

Operator shall defend, indemnify and hold City harmless from and against claims for any broker's commissions, finder's fee or other commission or fee relating to the leasing of the Service Area by anyone claiming by or through Operator.

38.19 Energy and Resource Conservation

Operator shall comply with all government-mandated water and energy conservation programs in fulfilling its obligations under this Agreement.

38.20 Authority of City Manager

Where this Agreement requires or permits City to act and no officer of the City is specified, City's Manager or the designated representative of City's Manager has the authority to act on City's behalf.

APPROVED AS TO FORM:

City of San José
a municipal corporation

Rosa Tsongtaatarii
Senior Deputy City Attorney

By _____
Name: Julia H. Cooper
Title: Director of Finance
Date: _____

Veolia Transportation Services, Inc.
A California Corporation

By _____
Name: Ken Westbrook
Title: President and COO
Date: _____

EXHIBIT A DEFINITIONS

Each reference in the body of the Agreement to specific terms or phrases set forth in this Exhibit shall have the specific meanings and/or contain the respective express information set forth below. To the extent there is a conflict between the information in this Exhibit and any more specific provision of the Agreement, such more specific provision shall control.

“Agreement” means this Agreement for Airport Shuttle Bus Service.

“Airport” means the Norman Y. Mineta San Jose International Airport, located in the City of San Jose, County of Santa Clara, State of California, as illustrated in **Exhibit J** together with any appurtenant properties or facilities acquired for purposes associated herewith.

“Anniversary Year” means a period of twelve (12) consecutive calendar months, whether or not all twelve (12) months fall within the same calendar year. The first day of the term of this Agreement shall mark the commencement of the first day of the first Anniversary Year.

“Assignment” means if Operator is a partnership, a withdrawal or change, whether voluntarily or by operation of law, of the partner or partners owning fifty-one percent (51%) or more of the partnership, or the dissolution of the partnership, shall be deemed a voluntary assignment. If Operator is a corporation or a limited liability company, any dissolution, merger, consolidation or other reorganization of Operator, or the sale or transfer of a controlling percentage of the capital stock or membership interests of Operator, or the sale of at least fifty-one percent (51%) of the value of the assets of Operator, shall be deemed a voluntary assignment. This Section shall not apply to corporations whose stocks are traded on national stock exchanges.

“Basic Hourly Rate” means the hourly rate of compensation as described in Section 6 of this Agreement.

“Bus Service” means the Bus Service provided by Operator pursuant to the terms of this Agreement.

“Business Day” means any calendar day except a Saturday, Sunday, and any day observed as a legal holiday by the City of San Jose.

“Commencement Date” means the date that Contractor's obligations under this Agreement begin.

“Day” means any calendar day, unless a Business Day is specified. The time in which an act is to be performed shall be computed by excluding the first day and including the last day.

“Director” means the City’s Director of Finance. The term includes any person expressly designated to exercise functions with respect to rights and obligations of the Director under this Agreement.

“Effective Date” means the date upon which City and Operator have both executed this Agreement which date shall be set out in the first paragraph on page 1 of this Agreement.

“Environmental Laws” shall mean and include all federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational, health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state super lien or environmental clean-up statutes.

“Expiration Date” means August 31, 2017 or as may be extended through the City’s exercise of options under Section 3.2 of this Agreement.

“FAA” means the Federal Aviation Administration, created by the United States Government under the Federal Aviation Act of 1958, as amended, or such other successor agency or agencies of the United States Government.

“Hazardous Materials” shall mean any and all (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws, and (b) any materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and (c) any substance, product, by-product, waste or any other material which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational, health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

“Headway” means the amount of time that separates two Shuttle Buses traveling the same Shuttle Bus route in the Service Area (as defined herein) in the same direction in

accordance with the Bus Service Schedule, attached and incorporated into this agreement and as described in **Exhibit K**.

"Improvements" means any addition, alteration, betterment, construction, or improvement to any all buildings, curbing, drainage, fencing, fixtures, landscaping, lighting, paving, piping, and walls now or hereafter located in, on, or about the Airport, or any part thereof.

"Laws" means all present and future applicable judicial decisions, statutes, laws, ordinances, regulations, building codes, Airport rules and regulations adopted from time to time, regulations, orders and requirements and policies of all governmental authorities, including without limitation city, state, municipal, county, federal agencies or the federal government and the FAA, and their departments, boards, bureaus, commissions and officials and such other authority as may have jurisdiction including, without limitation, any regulation or order of a quasi-official entity or body.

"Management Fee" means the compensation rate as set forth in Exhibit C of this Agreement.

"Maximum Annual Compensation" means the maximum compensation allowed under Exhibit C of this Agreement.

"Municipal Code" means the San Jose Municipal Code, as amended from time to time.

"Off-peak Period" means, for purposes of Bus Service scheduling, those hours of the day which do not fall within the Peak Period or the On-call Period.

"On-call Period" means those hours of the day as established by the Bus Service Schedule during which Bus Service is provided on demand to the users of the Airport.

"Operator" means Veolia Transportation Services, Inc., authorized to do business in the State of California.

"Parking Shuttle Bus Services" means the services provided by Operator pursuant to the Agreement For Airport Shuttle Bus Service Between the City of San Jose and Veolia Transportation Services, Inc.

"Parking Shuttle Bus Agreement" means the Agreement for Airport Shuttle Bus Service Between the City of San Jose and Veolia Transportation Services, Inc.

"Peak Period" means those hours of the day during which the Airport experiences substantial increases of airline passenger traffic, as such hours may be determined by the Director.

“Person” means an individual, a corporation, a partnership, a joint venture, and any other form of business association.

“Rental Car Center” means the consolidated facility for On-Airport rental car operations located at 1659 Airport Blvd.

“Service Area” means the areas of the Rental Car Center, parking facilities and the Terminal Buildings (as defined herein) and any portion of the roadway system of the Airport, including Terminal Drive and Airport Boulevard, on which Operator performs the Bus Service required under this Agreement. This Service Area is illustrated in EXHIBIT J.

“Shuttle Bus” means the shuttle buses that are leased and maintained in the Restated Agreement for Lease and Maintenance of Compressed Natural Gas (CNG) Shuttle Buses Between the City of San Jose and Penske Truck Leasing Co., LP dated September 16, 2009 and as amended on May 23, 2012.

“Subcontractor” means any person who operates a business within the Service Area under an agreement with Operator, including, but not limited to, any franchise, joint venture, management or sublease agreement for which the Director has given prior written approval.

“Summary” means Section 1 of this Agreement.

Tax shall mean and include any assessment, license, charge, fee, imposition, or levy imposed by any governmental body.

“Terminal A” means that certain airline terminal building at 2077 Airport Boulevard, San Jose, California (as illustrated in **EXHIBIT J**).

“Terminal B” means that certain airline terminal building at 1701 Airport Boulevard, San Jose, California (as illustrated in **EXHIBIT J**).

“Terminal Buildings” means Terminal A and Terminal B the (FIS) International Arrival Building and other airline terminal buildings which may hereafter exist during the term of this Agreement.

EXHIBIT B SCOPE OF SERVICES

Contractor shall perform the following services:

1 AUTHORIZED ACTIVITIES

1.1 GENERAL

During the term of this Agreement, Operator shall provide the highest level of professional, courteous, safe, and efficient Bus Service in a quiet and orderly manner, so as not to annoy, disturb, injure, harm or offend the general public, the tenants of the Airport, City and City personnel. The Bus Service shall include, without limitation: (a) operating Shuttle Buses in accordance with the Bus Service Schedule attached to this Agreement as **EXHIBIT K or as shall be determined by the Airport**; (b) providing licensed, well-trained, professional and courteous Shuttle Bus drivers to operate the Shuttle Buses and assist the public; and (c) rendering such other related services as may be requested by City and are more fully set forth in this document.

NOTE: Any problems encountered that are unique or not covered by the contract documents shall be submitted to the project manager in writing.

1.2 OPERATION OF SHUTTLE BUSES

City will grant Operator the right to use the Shuttle Buses leased by the Airport for the purposes and subject to the terms and conditions set out in the Agreement for Airport Shuttle Bus Service Between the City of San Jose and Veolia Transportation Services, Inc. Operator's duty hereunder shall be to provide qualified drivers to operate the Shuttle Buses and to assist the passengers as appropriate, including as required by the Americans with Disabilities Act (ADA). All Shuttle Buses which the Director notifies Operator is in service and available shall be made available for Operator's use pursuant to the terms of the Agreement For Airport Shuttle Bus Service Between the City of San Jose and Veolia Transportation Services, Inc. Operator's right to use the Shuttle Buses shall terminate upon the expiration or earlier termination of the Agreement.

1.3 SHUTTLE BUS MAINTENANCE

City, through its lease maintenance contractor, shall provide all maintenance for the Shuttle Buses leased by the Airport. Operator is responsible for maintenance and repairs of all vehicles provided by Operator if applicable. The Director shall provide Operator with an updated maintenance schedule during the term of the Agreement. Operator shall schedule the operation of the Shuttle Buses to ensure that each Shuttle Bus is available for maintenance as scheduled. Notwithstanding the maintenance schedule, Operator shall withdraw any Shuttle Bus from service as soon as possible after Director's request at any time during the term of the Agreement. (Operator may deliver the Shuttle Bus to City's maintenance provider.)

Operator shall direct its employees to monitor the condition of the Shuttle Buses during the course of operation of the Shuttle Buses, and Operator shall notify Director if Operator determines that any Shuttle Bus requires maintenance in advance of its scheduled maintenance.

1.4 WORK SCHEDULE

Operator shall operate the Shuttle Buses twenty four (24) hours per day, seven (7) days per week, every day of the year, legal holidays included, in accordance with the approved written Airport Shuttle Bus Schedule. Operator shall schedule staff to operate bus schedules, manage staff and maintain all requirements of the schedule and Scope of Work.

1.5 SHUTTLE BUS SCHEDULE

Operator shall operate the Shuttle Buses twenty four (24) hours per day, seven (7) days per week, every day of the year, legal holidays included, in accordance with the approved written Airport Shuttle Bus schedule. The initial schedule shall be substantially as set forth in EXHIBIT K.

Any proposed changes to the schedule shall set forth the arrival/departure times for each Shuttle Bus stop on the Airport per twenty-four (24) hour period per day, and shall be submitted to the Director for approval at least ten (10) Business Days before the proposed date of operation.

Operator acknowledges and understands that the Operator is responsible for coordinating the Airport Shuttle Bus schedule with the airlines' flight schedules.

The Director reserves the right to modify Operator's Airport Shuttle Bus schedule arrival/departure times or the locations of each bus stop, or both, at any time, and any modification to the schedule shall take effect on the date established by the Director in writing.

The Director shall give Operator no less than ten (10) days' prior written notice of any such modification, and Operator shall comply with any such revised schedule. Such revised schedule shall become effective on the date specified in the Director's notice.

1.6 SHUTTLE BUS HEADWAYS

Operator shall perform its Services in a manner as approved by the Director so that each Shuttle Bus arrives at each Shuttle Bus stop specified in the approved written Airport Shuttle Bus schedule (EXHIBIT K) not later than two (2) minutes after the time specified in the approved written Airport Shuttle Bus schedule (including the Headways specified therein) for the Peak Period, the Off-peak Period and the On-call Period, ninety percent (90%) of the time for each day of service for such bus.

Operator shall not be responsible for delays beyond its control such as road maintenance, major traffic delays, failure of parking lot entrance gates, or electrical power failures. Operator shall provide documentation of all delays in a format approved by the Director.

1.7 CUSTOMER COMMENTS

Each Shuttle Bus shall be adequately supplied with comment forms, which shall be kept in public view and be made available for use by the general public. The forms shall be provided at Operator's sole cost and expense and the format of the form shall be subject to the approval of the Director. Unless otherwise instructed by the Director, Operator shall handle patron correspondence as follows:

All responses to correspondence, inquiries, and complaints, where there is an express or implied request for a response, shall be handled in writing in an expeditious manner and shall in no event occur later than two (2) Calendar Days after receipt of the particular correspondence, inquiry or complaint.

All correspondence, inquiries, and complaints concerning Shuttle Bus operations shall be forwarded within two (2) Calendar Days to the Director. Copies of correspondence and records of Operator's responses thereto shall be forwarded within two (2) Calendar Days to the Director.

A sign bearing Operator's business name, business telephone number, and business address shall be posted on each Shuttle Bus and such sign shall receive the prior approval of the Director.

1.8 SIGNAGE

Each Shuttle Bus shall contain only such route/destination signs and messages that are acceptable to the Director and posted in such locations as are acceptable to the Director.

1.9 RADIOS

Operator shall provide radios and be able to communicate with each Shuttle Bus and supervisor via radio. Frequencies are to be determined well in advance of execution of the Agreement.

1.10 EMERGENCY RESPONSE

In the event of an emergency and/or special need on the Airport, as determined by the Director, Operator, promptly upon notification by the Director, shall make available all shuttle Buses and drivers requested by the Director for the transportation of any individuals, including on the Airfield, as deemed necessary by the Director.

In case of emergency, City shall compensate Operator for the use of such Shuttle Buses and drivers at the Basic Hourly Rate (as defined in EXHIBIT C entitled "Compensation").

Operator shall not be required to perform any act that is prohibited by law or is beyond the scope of the licenses and permits required by Operator to carry out its obligations under the Agreement.

1.11 DAILY SHUTTLE BUS MONITORING

Operator shall perform daily monitoring to ensure bus driver's compliance with on-time performance, dress and appearance, customer services, Shuttle Bus physical and operational condition and such other areas as designated by the Director. The monitoring shall be recorded on forms approved by City and is to be submitted daily to the Director.

1.12 CLEAN AND ORDERLY CONDITION

Operator shall maintain the Airport Shuttle buses in a clean, neat, and orderly manner at all times and provide for the timely disposal of trash and debris.

Operator shall ensure that the bus drivers maintain the Shuttle Buses in a clean, neat, and orderly condition, as determined by the Director, at all times during their operation of the Shuttle Buses.

Operator shall establish a schedule, approved by the Director, to ensure interior cleaning of the buses are conducted by Operator on a regular basis. Interior cleaning should include, but not be limited to dusting, vacuuming and spot/spill cleaning.

1.13 SHUTTLE BUS WASHING

Operator shall provide a schedule to wash each Shuttle Bus to maintain a reasonably clean exterior on each Shuttle Bus.

1.14 ENFORCEMENT OF NO SMOKING REQUIREMENTS

City shall post "NO SMOKING" signs on all Shuttle Buses. Operator shall ensure that the bus drivers inform passengers, as necessary, that smoking is prohibited on all Shuttle Buses at all times.

1.15 FUELING / PARKING OF BUSES

City will supply the motor vehicle fuel for the leased Shuttle Buses at designated Airport/City locations (EXHIBIT J). Shuttle Buses shall be fueled as necessary and at least once a day at times and with controls and procedures approved by the Director before they are placed in service. The fueling shall be performed by Operator's employees who are designated as Shuttle Bus fuelers, and Operator shall provide the Director with the number and names of these employees.

Operator and its agents, contractors, employees and representatives are expressly prohibited from fueling their personal motor vehicles or Operator's service vehicles with the motor vehicle fuel supplied by City or paid for by City, and any violation of this provision shall constitute a default under the Agreement.

All Shuttle Buses which are out of service and are not in need of maintenance, repair or other servicing shall be parked at the Airport's Shuttle Bus designated parking area or any other Airport area made available by City for such purpose. This area shall not be used by Operator's employees for the parking of personal vehicles, and such employees are required to park their personal vehicles in the employee parking lot.

2 RESTRICTIONS ON ACTIVITIES

The Services authorized shall be subject to the following conditions and restrictions:

2.1 COMPLIANCE WITH LAWS

This Agreement is made subject and subordinate to all existing and future agreements between the City and Operator shall act in compliance therewith. Operator shall comply with and conform to all Laws applicable to or affecting, directly or indirectly, the Operator, the Service Area, or Operator's operations and activities under this Agreement.

Further, Operator shall not do or permit anything to be done in, on, or about the Service Area, the Terminals, or the Airport, nor bring or keep or permit to be brought or kept therein, anything which is prohibited by a standard form of fire insurance policy or in any way increase or affect the then existing rate of fire or other insurance required to be carried upon the Service Area, the Airport, or the Terminals or any part thereof, or any of their contents, or which will cause a cancellation of any insurance policy covering the Service Area, the Airport, or the Terminals or any part thereof or any of their contents.

2.2 LIMITATION ON USES.

Operator shall not be permitted any use of the Parking Facilities Service Areas, the Terminals or the Airport except to provide the Airport Shuttle Bus Services as provided in this Agreement.

Airport shall not be restricted in any manner from granting exclusive or nonexclusive uses of Airport facilities to others.

Operator shall not engage either directly or indirectly in any form of business on the Airport or the Parking Facilities Service Areas except as expressly authorized pursuant to this Agreement.

Operator agrees to use the Parking Facilities Service Areas and the Airport in providing Airport Shuttle Bus Services only for the purposes described below:

The entry upon, use of, and exit from, the Airport and its common areas and facilities, including the Parking Facilities.

Neither Operator nor its agents, employees or officers shall install, maintain, operate or permit the installation, maintenance or operation in, on or about the Parking Facilities Service Areas of any vending machine or device designed to dispense or sell foods, beverages, tobacco products or merchandise of any kind to the general public without prior written consent from the Director.

2.3 SIGNS AND ADVERTISING

Operator shall not install, erect, affix, paint or place or permit the installation, erection, affixation, painting or placement of any sign or lettering in, on or about the Shuttle Buses, the Airport or the Service Area or any portion thereof, except as otherwise provided herein.

2.4 ALTERATIONS AND IMPROVEMENTS

Operator shall not make any improvements or alterations to the Shuttle Buses or Shuttle Bus Facilities without the prior written consent of the Director.

2.5 COVENANT OF CONTINUOUS OPERATION

Operator covenants to continuously operate or cause the continuous operation of its Services during the term of the Agreement, and the failure of Operator to do so shall constitute an event of default. The failure to comply with this covenant of continuous operation shall not be excused or waived by reason of Operator's failure to realize or achieve targeted revenue forecasts or goals for any period of time during the term of the Agreement.

3 REPORTS

3.1 REPORTS

Operator shall submit to the Director daily, monthly, and annual reports on report forms, which shall be provided by Operator. These report forms may be modified at any time by the Director.

3.1.1 Any and all daily reports shall be submitted by noon of the next Business day.

3.1.2 Monthly reports shall be submitted within five (5) Calendar Days of the end of the month, or part thereof, for which a report is due.

3.1.3 Annual reports shall be submitted within thirty (30) days of the end of the calendar year, or part thereof, for which a report is due.

3.1.4 Operator shall supply the Director with such other reports as the Director may request during the term of the Agreement.

4 WASTE OR NUISANCE

Operator shall not commit, cause, maintain or permit or suffer, or allow to be committed, caused, maintained, or permitted, any legal waste upon the Service Area, the Terminals or the Airport, nor any public or private nuisance or injury, nor any improper or unlawful use on the Airport or surrounding areas of the Airport, nor any other act or thing, or omission to act, which may in any way disturb the quiet enjoyment of, or obstruct or interfere with the rights of, any other operator, tenant, licensee, invitee, or subcontractor of any portion of the Service Area, the Terminals or the Airport or any portion thereof. Operator shall maintain in safe, good and clean condition all areas of the Airport where Operator conducts its operations.

Operator shall provide suitable covered fireproof receptacles for the safe and sanitary disposition of all trash (including any Hazardous Materials) and other refuse which is generated on the Shuttle Buses or at Operator's Facility. Piling of refuse or other similar items in view of a public area is prohibited.

Operator, at its sole cost and expense, must keep and maintain the areas occupied by Operator clean and free of rubbish, dirt, garbage, and other waste matter at all times and must provide and pay for regular janitorial and other service reasonably necessary for the proper maintenance of the Airport in a clean and sanitary manner.

Operator, at its sole cost and expense, will remove all dirt, rubbish, trash, garbage and other waste matter daily from the Airport and deposit in suitable containers for regular removal from the Airport. Operator is responsible for removal of trash from the Airport concession area.

5 TELEPHONES

All telephones located in the Parking/Shuttle Facilities, Rental Car Center and other Airport areas made available for Operator's use are the property of City , and are to be used by Operator's employees only for purposes which are directly associated with the performance of Operator's obligations under the Agreement. Any use of City telephones by Operator's employees which is of a personal nature is prohibited, and Operator agrees to reimburse City, for the entire costs of telephone service for such personal calls. Operator may install at its sole cost telephone service in the License For Use Agreement for the private use of its employees, and such installation shall be subject to the prior written approval of the Director.

6 OPERATOR PERSONNEL

6.1 GENERAL

6.1.1 Compliance with Laws.

Operator agrees to comply with all employment Laws applicable to its operations pursuant to the Agreement.

6.1.2 Operator's Managers

Operator shall hire qualified, competent and experienced managers, who shall be subject at all times to the direction and control of Operator. The Service Area shall be staffed by at least one manager for no less than one eight-hour shift per day and a manager shall be available for immediate consultation with City representatives for the remaining sixteen (16) hours of the day. Operator shall designate an employee as a shift supervisor for each eight-hour work period. Operator shall submit the qualifications and experience of all managers to the Director. On or before the Commencement Date, Operator shall provide the Director with a list of the names of all managers and shift supervisors employed by Operator who shall work at the Airport, and shall ensure that the Director has a current list of such managers and supervisors at all times.

6.1.3 Minimum Staffing Levels

The Operator shall provide a minimum staffing level of one (1) General Manager, one (1) Safety and Training Manager, one (1) supervisor per shift twenty four (24) hours per day, one (1) dispatcher per shift twenty four (24) hours per day and one (1) Office or Administrative Supervisor. Such positions shall be based in San Jose and responsible for all Airport Shuttle Bus Service. The Operator shall provide minimum staffing of Shuttle Bus drivers to maintain the approved Airport Shuttle Bus Schedule per requirements of EXHIBIT K.

6.1.4 Shuttle Bus Drivers

All of Operator's Shuttle Bus drivers and shift supervisors shall be properly licensed, and shall possess satisfactory work qualifications and experience with respect to their areas of responsibility. Operator shall not employ as a driver of a Shuttle Bus under the Agreement any person who has a poor record for operating any motor vehicle, including a Shuttle Bus. For purposes of this section, a poor driving record means three (3) or more points as shown on the driver's record as compiled by the Department of Motor Vehicles of the State of California. A driver must also qualify for a commercial driving license under the rules and regulations promulgated by the United States Department of Transportation. Operator shall verify the employment history of any employee who will be assigned to duty in a restricted area of the Airport and ensure that all employees meet all related security requirements. This verification shall cover the ten-year period preceding the employee's assignment to duty in a restricted area, and shall otherwise comply with all Laws. Operator shall maintain at all times a personnel file for each employee who shall include the verifications of employment referred to above and the employee's driver's license number and expiration date in accordance with the California Department of Motor Vehicles "Pull Notice Program". In addition, Operator shall maintain, at all times, a current employment roster of all employees of Operator and shall provide the Director with a current copy of such employment roster and copies of all such verifications at all times. Operator shall provide

Director with driver names and driver's license numbers within five (5) days prior to the Commencement Date.

6.1.5 Employee Use of Cell Phones

No Operator of any shuttle bus shall drive while using a wireless telephone or cell phone. Drivers shall use radios provided by the Operator.

6.1.6 Employee Appearance and Conduct

All employees, while on or about the Service Area and the Airport and acting within the course and scope of employment by Operator, shall be clean, neat in appearance, and uniformly attired, and shall behave courteously. No such personnel shall use improper language or act in a loud, offensive, or otherwise improper manner. Operator shall act to prevent the willful acts and omissions of its employees on or about the Service Area and the Airport. Operator shall control the conduct, demeanor, and appearance of its agents, employees, and officers.

6.1.7 Uniforms and Badges

Operator's company name patch or badge shall be attached to all uniforms, and the Director shall approve the uniforms and any subsequent modifications to such uniforms before Operator permits its employees to use them. Operator's employees shall wear in plain view an employee identification number and name tag and an Operator photo identification badge, each issued by Operator, City and the United States Customs Office or as may be otherwise required by law. Each Shuttle Bus driver shall wear as part of the uniform a reliable watch on his or her person during a work shift.

6.1.8 Employee Training

Operator shall provide semi-annual, on-going training to its employees with respect to customer service, Shuttle Bus operating procedures, Airport routes, driver safety, and other operations, maintenance and safety procedures. Operator shall provide written reports and other written proof that such training was given at the times and in the manner approved by the Director. Operator shall provide, at its own cost, driver training on all new buses the Airport adds to the Shuttle Bus fleet.

6.1.9 Employee Qualifications

All employees of Operator shall be able to effectively communicate orally and in writing in the English language. All Shuttle Bus drivers shall possess the appropriate licenses and permits, including medical clearances, and Operator shall verify the procurement and continuing validity of such licenses and permits at all times in accordance with the regulations of the California Department of Motor Vehicles. Operator represents and warrants that all Shuttle Bus drivers are duly qualified to operate the Shuttle Buses.

6.1.10 Customer Service

All Shuttle bus drivers shall provide customer service to passengers including, but not limited to, ADA required assistance, assistance on/off buses with baggage and providing information and directions.

6.2 QUALITY OF SERVICES

If the Director determines that the quality of Services rendered by Operator, including, without limitation, a determination by the Director that the standard of service provided by any employee of Operator is unsatisfactory under the provisions of the Agreement, Operator shall act immediately to remedy any and all such determinations after receipt of notice from the Director.

The Director reserves the right to disqualify from providing Services to the general public employees of Operator who do not meet the standards of Services specified in the Agreement.

In addition, the Director may, on behalf of City, require Operator to remove any such employees from the provision of Services to the general public pursuant to the terms and conditions of the Agreement.

Operator's failure to effectively remedy any determination to the satisfaction of the Director not more than five (5) days after receipt of notice of such determination shall constitute a default under the Agreement.

7 CONSTRUCTION OF ADDITIONAL TERMINAL AND/OR PARKING FACILITIES

City may, during the term of the Agreement, construct facilities in addition to the existing facilities to serve the Airport and/or an additional terminal building (collectively, the "Additional Facilities"). In the event that City elects to construct Additional Facilities, the Operator shall provide service to the Additional Facilities at the Basic Hourly Rate:

In the event that City elects to so construct Additional Facilities and the Director determine that the Additional Facilities may not be adequately serviced, then the Director will notify Operator in writing that the parties desire to negotiate for Operator's Services to the Additional Facilities. Any such negotiations shall not affect or alter in any way existing Services under this Agreement, including, without limitation, the Base Hourly Rate with respect thereto.

If the parties do not reach a mutually acceptable agreement to provide Operator's Services for the Additional Facilities within ninety (90) days after the date of such notice, then Operator will continue to provide the Services set forth in and in accordance with, the Agreement, and City may, at its election, negotiate and secure the services of another operator for the Additional Facilities.

8 EQUIPMENT AND SUPPLIES

Operator shall provide any and all equipment and supplies as are necessary to perform the Services, including, without limitation, motor vehicles (excluding Airport provided Shuttle Buses) employee uniforms, radio communication equipment, "dry sweep" and equipment necessary to clean fluid spills from the Airport provided Shuttle Buses and Operator's vehicles, radio communication equipment, and reasonable and necessary office equipment. Operator shall obtain any and all required permits and licenses to operate such radios.

9 LICENSE FOR USE OF PREMISES

To assist Operator in the performance of its obligations under the Agreement, City will authorize Operator to use specified space within the Airport pursuant to the License for Use of Airport Premises attached and incorporated into the Agreement for Airport Shuttle Bus Service (EXHIBIT G) between Contractor and the City of San Jose. Operator's rights and obligations with respect to such space are governed by that License Agreement.

Operator will be responsible for daily upkeep and maintenance of the provided space. It shall be kept in a clean and orderly manner at all times. Beyond warranty items, Operator shall be responsible for maintenance as described in the License Agreement. Fees for upkeep and maintenance shall be included in the Management fee portion for Operator Compensation.

10 AIRPORT MAINTENANCE AND REPAIRS

10.1 RIGHTS OF CITY

At all times during the term of the Agreement and without notice to Operator, City and its agents, contractors, employees and officers shall have the right to perform the following:

Install, construct, maintain, repair, replace and use any and all public utility lines and pipes, including, without limitation, all sewer, drainage, water, irrigation, electrical and fuel lines, and any appurtenances thereto, either on, above, or below the surface of any part of the Airport;

Inspect, alter or repair any part of the Airport that the Director may deem expedient or desirable for the proper enforcement of the terms and conditions of the Agreement or for the operation of the Airport; and

Engage in any other action which the Director deems reasonably necessary to administer the obligations of the City under the Agreement or by law.

10.2 ALTERATIONS, MAINTENANCE AND REPAIRS

Subject to the provisions of the Agreement, City shall perform all alterations, maintenance and repairs to the Airport and the Service Area, but shall have no responsibility or obligation with regard to the premises covered by the License Agreement.

10.3 DESTRUCTION OF AIRPORT

City shall determine in its sole discretion whether to repair any damage to the common areas and facilities of the Airport. If the Service Area is totally or substantially damaged, or City cannot complete the repair or restoration within six (6) months after the commencement date of repair or restoration, City may, at its option, give Operator notice of its intention to terminate the Agreement on a specified date.

11 AIRPORT SHUTTLE BUS SERVICE AREAS

The areas designated below and within Exhibit J encompass pickup and drop-off points for the transfer of both public passengers and City employees in the Airport proper area. Contractor is to incorporate these areas and the Shuttle Bus schedule (Exhibit K) into the operation of Shuttle Buses at the Airport (Reference 11.1 – 11.6).

11.1 Terminal A –

11.1.1 Including the Departures Curb and the Ground Transportation Center (serving the International Arrivals Facility)

11.2 Terminal B –

11.2.1 Including the Ground Transportation Curb

11.3 Rental Car Center

11.4 Parking Facilities –

11.4.1 Including Economy Lot 1 and Daily Lot 4

11.5 Compressed Natural Gas Facility

11.6 Operator offices and bus parking facility

11.7 Other areas as determined by the Director

12 TRANSLOC GPS/AVL SYSTEMS (SYSTEM)

Contractor shall provide the following System and requirements of this section at no additional cost to City, including no monthly service rates:

12.1 Transit Visualization System (TransLoc GPS/AVL System)

12.1.1 Real time passenger information system that can capture and transmit vehicle location information as frequently as every one second.

12.1.2 Access by passengers via mobile app, text, internet or fixed signage, specific to the route they are interested in and their location.

- 12.1.2.1 Access via smart phone, mobile phone, internet with use of GPS systems within the devices to pinpoint locations and specific routes
- 12.1.2.2 Access through links from Airport website and other airport related mobile apps
- 12.1.2.3 Fixed display capability, customized to the locations required
- 12.1.3 Provides detailed route maps including major roadways, facilities and shuttle stop locations
- 12.1.4 Provides accurate arrival estimates and locations for all buses on all routes
- 12.1.5 Turnkey system, including provision, installation, training and maintenance of all hardware and software including GPS and wireless equipment and all network, hosting and database servers
- 12.1.6 Provides management tracking, service hours, historical playback, web based exportable reports including on-time performance, headways and all arrivals and departures for every vehicle equipped with the system. System shall provide high level as well as drill down access to data. Airport staff as well as Operator shall have access to all data and functions of the system.
- 12.1.7 Training of all aspects of the system for Operator and designated Airport staff.
- 12.1.8 Flexibility to be installed and operated on additional vehicles as requested by the Director.
- 12.1.9 TransLoc GPS/AVL System Installation – Contractor shall deliver, install and implement the entire system (hardware, equipment and software) within sixty (60) to eighty (80) days after the start date of this Agreement, September 1, 2013.
- 12.1.10 The scheduled tasks include: the website configuration, installation, testing and training required to launch the new System for public use.
- 12.1.11 The schedule below, however, does not include the installation of the eleven (11) monitors that are included in this Agreement as no cost to the City. As these monitors would be installed on City property, Contractor shall coordinate installation for a mutually agreed date with Airport staff.

Date	TransLoc GPS/AVL System Implementation Schedule
9/1/13	Agreement Start Date
+1 day	New customer information document sent to City
+14 days	New customer information document returned to TransLoc completed
+28 days	Website created and web server deployed and configured
+46 days	Installation of units and testing period
+46 days	Training
+46 days	TransLoc delivered to City (Airport) for internal testing

+60 days	TransLoc launches to public
+80 days	Buffer for unforeseen delays

13 SMARTDRIVE TECHNOLOGY

Contractor shall continue to provide the usage of its SmartDrive Technology currently installed on all Airport buses to provide real-time tracking of safety incidents. SmartDrive is an on-board recording system that makes it easy for managers to improve operator safety and reduce operation costs. The system is comprised of a camera recorder and a connection to the engine's computer, tracks speed and logistics from the road, then reviews and identifies critical safety events and operational inefficiencies.

EXHIBIT C COMPENSATION

1. COMPENSATION BASED UPON COST PLUS SERVICE MODEL

City shall compensate Contractor for Airport Shuttle Bus Services according to the following schedule.

Table 1:

Description	Estimated Monthly Compensation Rate 9/1/13 – 8/31/14	Estimated Maximum Annual Compensation 9/1/13 – 8/31/14	Estimated Maximum 4-Year Compensation (assumes a 3% increase year to year) 9/1/14 – 8/31/17
Monthly Management Fee	\$92,386.89	\$1,108,642.68	\$4,638,147.44
Variable Cost (Basic Hourly Rate \$52.92x4,335 hours)	\$229,408.20	\$2,752,898.40	\$11,517,100.07
Transit Visualization System installation and monthly service and maintenance:	No additional cost	No additional cost	No additional cost
Estimated Total Maximum Compensation	\$321,795.09	\$3,861,541.08	\$16,155,247.51

2. MAXIMUM COMPENSATION

The maximum amount of compensation to be paid to Contractor shall not exceed Sixteen Million One Hundred Fifty-Five Thousand Two Hundred Forty-Seven dollars and 51 cents (\$16,155,247.51) for the initial four-year contract term as set forth in Table 1 above. This amount is inclusive of all fees and expenses incurred in performance of the services provided under this Agreement. Any hours worked for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to the City.

3. COMPENSATION TO OPERATOR

3.1. Basic Rate of Compensation

City agrees to pay Contractor in arrears, upon receipt of invoice, a Monthly Management Fee and a Basic Hourly Rate for actual shuttle bus service provided by Contractor for shuttle bus operations. However, the total Maximum Annual Compensation for the first year shall not exceed the amount designated in this Exhibit C of the Agreement for the initial year of the Agreement. The Maximum Annual Compensation shall be adjusted upon adjustment of the Monthly Management Fee and Basic Hourly Rate in accordance with the terms of this Exhibit.

The Monthly Management Fee represents costs related to administrative, safety, management and dispatch staff, fixed fleet insurance costs, fixed facility and equipment costs, corporate overhead and a portion of profit.

The Basic Hourly Rate represents costs related to shuttle bus drivers, utility and supervisory staff, support vehicles, bus cleaning and operations related expenses and a profit.

Should Contractor be unable to provide Airport approved bus service due to lack of bus availability, City agrees to pay Contractor the Basic Hourly Rate for shuttle bus service while replacement buses are procured.

The compensation for the Transit Visualization (TransLoc GPS/AVL) System will be included in the consideration for compensation by the City, and at no additional cost to the City as set forth in Table 1.

3.2. Statement of Hourly Costs

On or before the Commencement Date, Contractor shall provide a written statement of the hourly cost components that comprise its cost per hour of Services per Shuttle Bus. The Director shall have the right to review and audit the methods of computation of such hourly costs.

3.3. Monthly Invoice

Operator shall submit a monthly statement to the Director within five (5) days from the end of each month indicating the following:

3.3.1. Number of hours of scheduled Shuttle Bus service performed during the month billed at the Basic Hourly Rate; and

3.3.2. Number of hours of special service, if applicable.

3.4. Adjustments to Monthly Invoice

Director reserves the right to review and adjust monthly invoices based on information from the Automated Vehicle Identification System or any other available tools and techniques used for monitoring bus service hours. These adjustments will be submitted to the Contractor for review, and Contractor will have five (5) calendar days from date of receipt to respond or demonstrate that stated adjustment did not occur. Director shall review Contractor's evidence as soon as reasonably possible and render a decision sustaining or reversing the adjustment(s). The Director's decision shall be final, and Contractor shall apply adjustment(s) to subsequent monthly invoice.

3.5. Payment

Each installment of compensation computed in accordance with the Basic Hourly Rate, Monthly Management Fee and Optional Transit Visualization System (if applicable) shall be payable in lawful money of the United States to Operator or to such person or at such place as Operator may designate from time to time in writing.

4. CPI ADJUSTMENT

The Contractor's compensation rates shall be subject to adjustment on each anniversary of the performance period. The adjustment shall be calculated as follows:

- 4.1.** The base for computing the adjustment shall be the Consumer Price Index for Urban Wage Earners and Clerical Workers (with a base year of 1982-1984=100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor Statistics ("Index") for the month of June, published in the month of July. If the Extension Index published has increased over or decreased under the Beginning Index, the monthly compensation rates for the extension term shall be set by multiplying the then expiring term's monthly compensation rate by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. Upon adjustment of the monthly compensation rates, the parties shall immediately execute a written amendment to the Agreement setting forth the new monthly compensation rates, and attach the same as a revised exhibit to the Agreement.
- 4.2.** If the Index is changed so that the base year differs from that used as of the month immediately preceding the Agreement's commencement date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term of the Agreement such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

- 4.3. The preceding provision of this Section notwithstanding, the adjustment of any monthly compensation rate for any extension term shall not exceed 3% of the previous term's monthly compensation rate.
- 4.4. For the purpose of illustration only, if a Beginning Index is 115 and the Extension Index is 124, the monthly compensation rate to be paid during the extension term shall \$ X (the then expiring term's monthly compensation rate) multiplied by 124/115.

EXHIBIT D

INSURANCE REQUIREMENTS

Contractor, at Contractor's sole cost and expense, shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by the Contractor, its agents, representatives, employees or subcontractors or suppliers. The cost of such insurance shall be included in the Contractor's bid.

I. Minimum Scope and Limit of Insurance

There shall be no endorsements reducing the scope of coverage required below unless approved by the City's Risk Manager.

Type of Insurance	Minimum Limit
1. Commercial General Liability The coverage provided by Insurance Services Office "occurrence" form CG 0001, including coverages for contractual liability, personal injury, broadform property damage, independent contractors, products and completed operations.	\$5,000,000 per occurrence for bodily injury, personal injury and property damage or \$10,000,000 annual aggregate.
2. Automobile Liability The coverage provided by Insurance Services Office form number CA 0001. Coverage shall be included for all owned, non-owned and hired automobiles.	\$10,000,000 combined single limit per accident for bodily injury and property damage.
3. Workers' Compensation and Employer Liability As required by the Labor Code of the State of California.	\$1,000,000 combined single limit per accident for bodily injury and property damage.

II. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and contractors; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim

administration and defense expenses in an amount specified by the City's Risk Manager.

III. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages

- a. City, its officials, employees, and agents are to be covered as additional insureds as respects: liability arising out of activities performed by, or on behalf of, the Contractor; products and completed operations of the Contractor; premises owned, leased or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, and agents.
- b. Contractor's insurance coverage shall be primary insurance as respects the City, its officials, employees, and agents. Any insurance or self-insurance maintained by the City, its officials, employees, and agents shall be excess of the contractor's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, or agents.
- d. Coverage shall state that the Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. Coverage shall contain a waiver of subrogation in favor of the City, its officials, employees, and agents.

2. Workers' Compensation and Employers Liability

Coverage shall be endorsed to state carrier waives its rights of subrogation against the City, its officials, and agents.

3. All coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City; except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

IV. Acceptability of Insurance

Insurance is to be placed with insurers acceptable to the City's Risk Manager.

V. Verification of Coverage

Contractor shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Copies of all the required ENDORSEMENTS shall be attached to the CERTIFICATE OF INSURANCE which shall be provided by the Contractor's insurance company as evidence of the stipulated coverages.

Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

City of San Jose – Finance Department
Risk & Insurance
200 East Santa Clara St., 14th Floor
San Jose, CA 95113-1905

VI. Subcontractors

Contractors shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

EXHIBIT E
AIRPORT CONCESSION DISADVANTAGED
BUSINESS ENTERPRISE PROGRAM REQUIREMENTS

1 POLICY STATEMENT

The City of San José has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) Program in accordance with regulations of the U. S. Department of Transportation (DOT), 49 CFR Part 23. A copy of the ACDBE Program is available from the Office of Equality Assurance, 200 East Santa Clara Street, Fifth Floor, San José, CA 95113, 408-535-8455. The City receives federal financial assistance from the DOT, and as a condition of receiving this assistance, the City assures that it will comply with 49 CFR Part 23.

It is the policy of the City of San José to ensure that Disadvantaged Business Enterprises (ACDBEs), as defined in Part 23, have an equal opportunity to receive and participate in Airport Concessions. It is also our Policy to:

- Ensure nondiscrimination in the award and administration of Airport Concessions;
- Create a level playing field on which ACDBEs can compete fairly for Airport Concessions;
- Ensure that the ACDBE Program is narrowly tailored in accordance with applicable law;
- Ensure that only firms that fully meet 49 CFR Part 23 eligibility standards are permitted to participate as ACDBEs;
- Help remove barriers to the participation of ACDBEs in Airport Concessions; and
- Assist the development of firms that can compete successfully in the marketplace outside the ACDBE Program.

The City's Director of the Office of Equality Assurance has been delegated as the ACDBE Liaison Officer. In that capacity, the Director is responsible for implementing all aspects of the ACDBE Program. Implementation of the ACDBE Program is accorded the same priority as compliance with all other legal obligations incurred by the City in its financial assistance agreements with the Department of Transportation.

2 DEFINITION OF TERMS

The terms used in the Program have the meanings defined in 49 CFR Section 23.3 and Section 26.5 and are as follows:

2.1 Disadvantaged Business Enterprise

Means a for-profit small business concern that is:

- 1) At least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- 2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and
- 3) Whose personal net worth does not exceed \$750,000.

2.2 Small Business Concern

In order to qualify as an ACDBE, a firm must qualify as a small business concern. As a general rule, the ACDBE regulations treat a firm as a small business concern eligible to be certified as an ACDBE if its gross receipts, averaged over the firm's previous three fiscal years, do not exceed \$30 million.¹

2.3 Socially and Economically Disadvantaged Individual

Means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who meets one or more of the following conditions:

- Any individual determined to be a socially and economically disadvantaged individual on a case-by-case basis;
- Any individual in the following groups, members of which are reputably presumed to be socially and economically disadvantaged:
 - "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the

¹ The following types of businesses have size standards that differ from the standard set forth above:

- Banks and financial institutions: \$275 million in assets
- Car rental companies: \$40 million average annual gross receipts over the firm's three previous fiscal years.
- Pay telephones: 1,500 employees.

Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

- “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- Women;
- Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA), at such time as the SBA designation becomes effective.

2.4 Personal Net Worth

Means the net value of the assets of an individual remaining after total liabilities are deducted.

An individual's personal net worth does not include:

- 1) The individual's ownership interest in an applicant or participating ACDBE firm, or;
- 2) The individual's equity in his or her primary place of residence.

An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

The imposition of a personal net worth cap of \$1,320,000.00 means that regardless of race, gender or size of their business, any individual whose personal net worth exceeds \$1,320,000.00 is not considered economically disadvantaged and is not eligible for the ACDBE Program.

2.5 NON-DISCRIMINATION

As a recipient of DOT financial assistance, the City will meet the non-discrimination requirements provided in Part 26, §26.7, with respect to the award and performance of any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement covered by part 23.

The City will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any concession agreement, management contract or other agreement covered by 49 CFR Part 23 on the basis of race, color, sex or national origin.

In administering its ACDBE Program, the City will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the ACDBE Program with respect to individuals of a particular race, color, sex or national origin.

The City acknowledges these representations are also in accordance with obligations contained in its Civil Rights, ACDBE and ACDBE Airport grant assurances.

2.6 QUOTAS

The City will not use quotas in any way in the administration of its ACDBE Program.

2.7 ACDBE LIAISON OFFICER (ACDBELO)

The City has designated the following individual as its ACDBE Liaison Officer:

Nina S. Grayson
Director, Office of Equality Assurance
City of San José
200 East Santa Clara Street, 5th Floor
San José, CA 95113

Telephone: 408.535.8455
Fax: 408.292.6270
E-Mail: nina.grayson@sanjoseca.gov

In this capacity, the Director is responsible for implementing all aspects of the ACDBE Program and ensuring that the City complies with all provisions of 49 CFR Part 23.

The ACDBELO is responsible for developing, implementing and monitoring the ACDBE Program in coordination with other appropriate officials. Duties and responsibilities include the following:

- Gathers and reports statistical data and other information as required by FAA or DOT.
- Reviews third party contracts and purchase requisitions for compliance with this program.
- Works with all departments to set overall annual goals.
- Ensures that bid notices and requests for proposals are available to ACDBEs in a timely manner.
- Identifies contracts and procurements so that ACDBE goals are included in solicitations (both race-neutral methods and contract specific goals)
- Analyzes the City's progress toward attainment and identifies ways to improve progress.
- Participates in pre-bid meetings.
- Advises the CEO/governing body on ACDBE matters and achievement.
- Provides ACDBEs with information and assistance in preparing bids, obtaining bonding, financing, and insurance; acts as a liaison to the OSDBU-Minority Resource Center (MRC).

- Plans and participates in ACDBE training seminars.
- Acts as liaison to the Uniform Certification Process in the State of California.
- Provides outreach to ACDBEs and community organizations to advise them of opportunities.

2.8 DIRECTORY

The directory identifying all firms eligible to participate as ACDBEs is available at www.dot.ca.gov or by contacting the California Department of Transportation/Unified Certification Program at 1-916-324-0780.

2.9 REQUIRED CONTRACT CLAUSES

Contract Assurance:

The City will ensure that the following paragraphs are placed in every Airport Concession contract and subcontract:

- This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The Concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.
- The Concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

2.10 REPORTING, COMPLIANCE AND ENFORCEMENT PROCEDURES

The City will retain sufficient basic information about its ACDBE Program implementation, ACDBE certification, and the award and performance of agreements and contracts to enable the FAA to determine our compliance with Part 23. This data will be retained for a minimum of three years following the end of the concession agreement or other covered contract.

It is the Concessionaire's or contractor's responsibility to maintain records and documents for four (4) years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the City or DOT. This reporting requirement is also extended to any certified ACDBE.

The City submits to the FAA Regional Civil Rights Office, an annual ACDBE participation report on the form in Appendix A of Part 23.

Confidentiality: The City will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal law and the California Public Records Act, Government Code §§6250-6276.48. The California Public Records Act provides for disclosure of public documents when a request is made unless they fall within specified exceptions. There are numerous exceptions which may or may not apply depending on the type of documents.

Except as otherwise required pursuant to federal, state or local law, City will not release personal financial information submitted by an ACDBE in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

The City will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 23.

At the Norman Y. Mineta San José International Airport, the Airport Property Section monitors ACDBE sales. ACDBE sales are tracked as a percentage of overall concession revenue. The Airport maintains these statistics and graphs the results on a monthly basis to ensure that work committed to ACDBEs at contract award is actually performed by the ACDBEs.

On a daily basis, Airport staff monitors the ongoing operation of the concession related contracts consistent with the requirements of Part 23 and this Program. The City may impose such contract remedies as are available under the contract and under federal, state and local law and regulations for non-compliance. Failure to carry out the City's ACDBE Policy and goals and obligations set forth above shall constitute a breach of contract that may result in termination of the Concession Agreement, or such other remedy as deemed appropriate by the City.

The following monitoring and enforcement provisions are included in the City's concession agreements and management contracts:

2.10.1 Compliance: Failure to carry out the ACDBE Policy and obligations set forth above shall constitute a breach of contract that may result in termination of the Agreement, or such other remedy as deemed appropriate by the City.

2.10.2 Audits: The City may also perform interim audits of contract payments to ACDBE management firms or subcontractors. The audit will review payments to ACDBE subcontractors and gross receipts earned by or payments for goods and services and management agreements to ACDBEs to ensure that the actual amount equals or exceeds the dollar amounts stated in the report of proposed ACDBE participation.

2.10.3 Replacement/Substitutions of ACDBEs: For concession contracts that include concession-specific ACDBE goals, Concessionaire will be required to have a valid arrangement with the ACDBE(s) designated by

Concessionaire to fulfill the contract goal. For any such concession contracts that include concession-specific ACDBE goals, Concessionaire will be allowed to substitute the originally designated ACDBE(s) only if it is demonstrated to the City that the ACDBE(s) is unwilling or unable to perform. For any such concession contracts that include concession-specific ACDBE goals, Concessionaire's ability to negotiate a more advantageous contract with another ACDBE firm will not be considered a valid basis for substitution. For any such concession contracts that include concession-specific ACDBE goals, if an ACDBE is unwilling or unable to perform, Concessionaire shall inform the City in writing and include documentation to justify the substitution, including a statement from the ACDBE to be replaced acknowledging the substitution. In any such instance, Concessionaire will identify a replacement ACDBE or document good faith efforts to replace the ACDBE with another ACDBE. For any such concession contracts that include concession-specific ACDBE goals, if Concessionaire or a non-ACDBE firm performs the work originally committed to an ACDBE, the Concessionaire shall submit a revised ACDBE plan to the City detailing how the ACDBE goal will be met or will supply documentation detailing good faith efforts which have been made to meet the goal.

2.10.4 ACDBE Reports: Concessionaire shall submit, in the format required by the City, a monthly report of ACDBE utilization. The City reviews the monthly reports that are required to be submitted to the City by concessionaires to ensure that the ACDBE participation levels remain in compliance with any contract requirements and to verify that the work committed to ACDBEs is actually performed by ACDBEs. This information will also be used to provide the statistical data for the achievement reports to the FAA. If the City determines that any concessionaire is not complying with any contract requirements regarding this Program, the City will implement the contract remedies specified above.

2.10.5 Notices to DOT: The City will also notify the U.S. Department of Transportation of any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 49 CFR Section 26.107.

2.11 CONTRACT GOALS

The City will use concession specific goals to meet any portion of the overall goals the City does not project being able to meet using race-neutral means. Concession specific goals are established so that, over the period to which the overall goals apply, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

2.12 GOOD FAITH EFFORTS

To be eligible to be awarded a concession that has a concession specific goal; competitors must make good faith efforts to meet the goal. A competitor may do so either by obtaining enough ACDBE participation to meet the goal or by documenting that it made sufficient good faith efforts to do so. (23.25(e)(1)(iv)). Examples of good faith efforts are found in Appendix A to 49 CFR Part 26. The procedures applicable to 49 CFR Part 26.51-3, regarding contract goals apply to the City's concession specific goals. Specifically;

2.12.1 Demonstration of good faith efforts (26.53(a) & (c))

The Airport Managers are responsible for determining whether a concessionaire who has not met the concession specific goal has documented sufficient good faith efforts to be regarded as responsive.

City will ensure that all information is complete and accurate and adequately documents the concessionaire's good faith efforts before City commit to the concession agreement with the bidder/offeree.

2.12.2 Information to be submitted (26.53(b))

For concessions that have a concession specific goal, the City treats concessionaire's compliance with good faith efforts' requirements as a matter of responsiveness.

Each solicitation for which a concession specific goal has been established will require the concessionaires to submit the following information:

1. The names and addresses of ACDBE firms or ACDBE suppliers of goods and services that will participate in the concession;
2. A description of the work that each ACDBE will perform;
3. The dollar amount of the participation of each ACDBE firm/supplier participating;
4. Written and signed documentation of commitment to use a ACDBE whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the ACDBE that it is participating in the concession as provided in the prime concessionaire's commitment and
6. If the contract goal is not met, evidence of good faith efforts.

2.12.3 Administrative reconsideration (26.53(d))

Within three (3) days of being informed by the City that it is not responsible because it has not documented sufficient good faith efforts, a proposer may request administrative reconsideration. Concessionaire should make this

request in writing to the City Manager, 200 East Santa Clara Street, San José, California 95113. The reconsideration official will not have played any role in the original determination that the proposer did not document sufficient good faith efforts.

As part of this reconsideration, the proposer will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The proposer will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. City will send the proposer a written decision on reconsideration, explaining the basis for finding that the proposer did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the DOT.

For concessions that have a concession specific goal, any business that fails to demonstrate that it achieved the concession-specific ACDBE participation goal and fails to demonstrate that it made sufficient good faith efforts to do so shall be deemed “non-responsive” and, therefore, shall be ineligible for award of the concession contract.

2.13 Good Faith Efforts when an ACDBE is replaced on a concession (26.53(f))

For concessions that have a concession specific goal, the City will require a concessionaire or contractor to make good faith efforts to replace an ACDBE that is terminated or has otherwise failed to complete its concession agreement, lease, or subcontract with another certified ACDBE, to the extent needed to meet the concession specific goal. City will require the concessionaire or contractor to notify the ACDBE Liaison officer immediately of the ACDBEs inability or unwillingness to perform and provide reasonable documentation.

In this situation, City will require the concessionaire or contractor to obtain our prior approval of the substitute ACDBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the concessionaire or contractor fails or refuses to comply in the time specified, our contracting office will give notice and opportunity to cure until satisfactory action has been taken. If the concessionaire or contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

When a concession specific goal is established pursuant to the City’s ACDBE Program, the following specification will be used to notify concession firms of the requirements to make good faith efforts:

The requirements of 49 CFR Part 23, regulations of the U.S. Department of Transportation, applies to this concession. It is the policy of the City of San José to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this concession will be conditioned upon satisfying the requirements of this proposal/bid specification. These

requirements apply to all concessions firms and suppliers, including those who qualify as an ACDBE. An ACDBE concession specific goal of **0 percent (0%)** of annual gross receipts; value of leases and/or purchases of goods and services) has been established for this concession. The concession firm shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 to meet the concession specific goal for ACDBE participation in the performance of this concession.

The concession firm will be required to submit the following information: (1) the names and addresses of ACDBE firms and suppliers that will participate in the concession, (2) A description of the work that each ACDBE will perform; (3) The dollar amount of the participation of each ACDBE firm participating; (4) Written and signed documentation of commitment to use a ACDBE whose participation it submits to meet a contract goal; (5) Written and signed confirmation from the ACDBE that it is participating in the concession as provided in the prime concessionaire's commitment, and (6) If the contract goal is not met, evidence of good faith efforts.

2.14 COUNTING ACDBE PARTICIPATION FOR CAR RENTALS

The City will count ACDBE participation toward overall and contract goals for car rentals as provided in 49 CFR Part 23.5e.

2.15 COUNTING ACDBE PARTICIPATION FOR CONCESSIONS OTHER THAN CAR RENTALS

The City will count ACDBE participation toward overall and contract goals for concessions other than car rentals as provided in 49 CFR Part 23.55.

2.16 ACDBE CERTIFICATION

The City will use the procedures and standards of 49 CFR Part 26, except as provided in 49 CFR Section 23.31, for certification of ACDBEs to participate in the City's concessions program and such standards are incorporated herein.

For information about the certification process or to apply for certification firms should contact:

**California Department of Transportation
Civil Rights – MS 79
1823 14th Street
Sacramento, CA 95814
Phone: 916-324-0790
Fax: 916-324-1862
Website: <www.dot.ca.gov>**

The City is a member of the California UCP, which has established four Regional DBE Certification Clusters throughout the State to effectively facilitate statewide

DBE certification activities. Completed certification packets are to be mailed to one of the agencies serving the county where the firm has its principal place of business.

The California UCP will not process a new application for DBE certification from a firm having its principal place of business in another state, unless the firm has already been certified in that state.

Certification decisions for ACDBEs to participate in the City's concession program are made by the California Unified Certification Program (CUCP).

All firms certified by the CUCP on behalf of the City and included in the CUCP directory will be reviewed and recertified by the CUCP based on the submittal of the information required for certification to determine their ACDBE eligibility. These reviews will be completed as soon as possible, but not later than April 21, 2006 or three years from the anniversary date of each firm's most recent certification, whichever is later. The City will insure that only firms certified as eligible ACDBEs participate as ACDBEs in its concession program.

All owners of all certified ACDBEs will be required to submit, on the anniversary date of their certification, a "no change" affidavit meeting the requirements of 26.83(i), including any change in their circumstances affecting their ability to meet size, disadvantaged status, personal net worth, ownership or control criteria or of any material changes in the information provided with the application for certification.. A copy of the renewal serves as the City's and CUCP's no change affidavit.

The California UCP handles all decertification decisions on behalf of the City with respect to the Airport's concession program.

City will treat a firm as a small business eligible to be certified as an ACDBE if its gross receipts, averaged over the firm's previous three fiscal years do not exceed \$30 million. The size standard for banks and other financial institutions is \$275 million in assets, for car rental companies it is \$40 million, and for pay telephone companies the standard is 1,500 employees. (23.33) The personal net worth standard used in determining eligibility for purposes of part 23 is \$1,320,000.00 and any person who has a personal net worth exceeding this amount is not a socially and economically disadvantaged individual, even if a member of a group is otherwise presumed to be disadvantaged. (23.35).

City will presume that a firm that is certified as a DBE under part 26 is eligible to participate as an ACDBE. However, before certifying such a firm, City will ensure that the disadvantaged owners of a DBE certified under part 26 are able to control the firm with respect to its activity in our concessions program. City is not obligated to certify a part 26 DBE as an ACDBE if the firm does not do work relevant to our concessions program. (23.37).

City recognize that the provisions of part 26, Sections 26.83I (2-6) do not apply to certifications for purposes of part 23. City will obtain resumes or work histories of the principal owners of the firm and personally interview these individuals. City will analyze the ownership of stock of the firm, if it is a corporation. City will analyze the bonding and financial capacity of the firm. City will determine the work history of the firm, including any concession contracts or other contracts it may have received.

City will compile a list of the licenses of the firm and its key personnel to perform the concession contracts or other contracts it wishes to receive. City will obtain a statement from the firm of the types of concessions it prefers to operate or the type of other contracts it prefers to perform. City will ensure that the ACDBE firm meets the applicable size standard. (23.39(a)(b)).

City acknowledges that a prime contractor includes a firm holding a prime contract with an airport concessionaire to provide goods or services to the concessionaire or a firm holding a prime concession agreement with a recipient. City recognizes that the eligibility of Alaska Native Corporations (ANC) owned firms for purposes of part 23 is governed by part 26 Section 26.73(h). (23.39(d)).

City will use the certification standards of part 23 to determine the ACDBE eligibility of firms that provide goods and services to concessionaires. (23.39(i)).

In instances when the eligibility of a concessionaire is removed after the concessionaire has entered into a concession agreement because the firm exceeded the size standard or the owner has exceeded the PNW standard, and the firm in all other respects remains an eligible DBE, City may continue to count the concessionaire's participation toward ACDBE goals during the remainder of the current concession agreement. City will not count the concessionaire's participation toward ACDBE goals beyond the termination date for the concession agreement in effect at the time of the decertification. (23.39(e)). Attachment 7 to the ACDBE Program recites the Part 26.87 procedures for removal of an ACDBE's eligibility.

City will use the Uniform Application Form found in appendix F to part 26 with additional instruction as stated in 23.39(g). A copy of this form is included as Attachment 6 of the ACDBE Program.

EXHIBIT F
LABOR COMPLIANCE



LABOR COMPLIANCE ADDENDUM

AGREEMENT TITLE:	Airport Shuttle Bus Service
Contractor Name and Address:	Veolia Transportation Services, Inc. 325 Martin Ave. Santa Clara, CA 95050

By executing this Addendum, Contractor acknowledges and agrees that the work performed pursuant to the above referenced Agreement or Service Order is subject to all applicable provisions.

Payment of Minimum Compensation to Employees. Contractor shall be obligated to pay not less than the General Prevailing Wage Rate and/or Living Wage Rate as indicated in the attached Exhibit(s) titled **Work Classification and/or Living Wage Determination**.

A. *Prevailing Wage Requirements.* California Labor Code and/ or Resolutions of the San Jose City Council require the payment of not less than the general prevailing rate of per diem wages and rates for holiday and overtime and adherence to all labor standards and regulations. The General Prevailing Wage Rates may be adjusted throughout the term of this Agreement. Notwithstanding any other provision of this Agreement, Contractor shall not be entitled to any adjustment in compensation rates in the event there are adjustments to the General Prevailing Wage Rates.

B. *Living Wage Requirements.* Any person employed by Contractor or subcontractor or City financial recipient or any sub recipient whose compensation is attributable to the City's financial assistance, who meets the following requirements is considered a covered employee. The employee: 1) is not a person who provides volunteer services, that are uncompensated except for reimbursement of expenses such as meals, parking or transportation; 2) spends at least half of his or her time on work for the City [4 hours a day or 20 hours a week]; 3) is at least eighteen (18) years of age; and 4) is not in training for the period of training specified under training standards approved by the City.

C. *Reports.* Contractor shall file a completed and executed copy of this Addendum with the Finance Department. Upon award the Finance Department/Purchasing Division shall provide the contractor with compliance documents to be completed and returned (with supporting documentation) to the Office of Equality Assurance. **These documents must be returned within 10 days of receipt.** Contractor shall not perform on site work on this contract until labor compliance documents are filed. Contractor shall also report additional information, including certified payrolls, as requested by Director of Equality Assurance to assure adherence to the Policy.

D. Coexistence with Any Other Employee Rights. These provisions shall not be construed to limit an employee's ability to bring any legal action for violation of any rights of the employee.

E. Audit Rights. All records or documents required to be kept pursuant to this Agreement to verify compliance with the Wage Requirement shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at Contractor's address indicated for receipt of notices in this Contract.

F. Enforcement.

1. **General.** Contractor acknowledges it has read and understands that, pursuant to the terms and conditions of this Agreement, it is required to comply with the Wage Requirement and to submit certain documentation to the City establishing its compliance with such requirement. ("Documentation Provision.") Contractor further acknowledges the City has determined that the Wage Requirement promotes each of the following (collectively "Goals"):
 - a. It protects City job opportunities and stimulates the City's economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.
 - b. It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate compensation tends to negatively affect the quality of services to the City by fostering high turnover and instability in the workplace.
 - c. Paying workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San Jose because it increases the ability of such workers to attain sustenance, decreases the amount of poverty and reduces the amount of taxpayer funded social services in San Jose.
 - d. It increases competition by promoting a more level playing field among contractors with regard to the wages paid to workers.

2. Remedies for Contractor's Breach of Prevailing Wage/Living Wage Provisions.

- a. **WITHHOLDING OF PAYMENT:** Contractor agrees that the Documentation Provision is critical to the City's ability to monitor Contractor's compliance with the Wage Requirement and to ultimately achieve the Goals. Contractor further agrees its breach of the Documentation Provision results in the need for additional enforcement action to verify compliance with the Wage Requirement. In light of the critical importance of the Documentation Provision, the City and Contractor agree that Contractor's compliance with this Provision, as well as the Wage Requirement, is an express condition of City's obligation to make each payment due to the Contractor pursuant to this Agreement. **THE CITY IS NOT OBLIGATED TO MAKE ANY PAYMENT DUE THE CONTRACTOR UNTIL CONTRACTOR HAS PERFORMED ALL OF ITS OBLIGATIONS UNDER THESE PROVISIONS. THIS**

PROVISION MEANS THAT CITY CAN WITHHOLD ALL OR PART OF A PAYMENT TO CONTRACTOR UNTIL ALL REQUIRED DOCUMENTATION IS SUBMITTED. Any payment by the City despite Contractor's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of the Wage Requirement or the Documentation Provision.

- b. RESTITUTION:** Require the employer to pay any amounts underpaid in violation of the required payments and City's administrative costs and liquidated damages and, in the case of financial assistance, to refund any sums disbursed by the City.
- c. SUSPENSION OR TERMINATION:** Suspend and/or terminate Agreement for cause;
- d. DEBARMENT:** Debar Contractor or subcontractor from future City contracts and/or deem the recipient ineligible for future financial assistance.
- e. LIQUIDATED DAMAGES FOR BREACH OF WAGE PROVISION:** Contractor agrees its breach of the Wage Requirement would cause the City damage by undermining the Goals, and City's damage would not be remedied by Contractor's payment of restitution to the workers who were paid a substandard wage. Contractor further agrees that such damage would increase the greater the number of employees not paid the applicable prevailing wage and the longer the amount of time over which such wages were not paid. The City and Contractor mutually agree that making a precise determination of the amount of City's damages as a result of Contractor's breach of the Wage Requirement would be impracticable and/or extremely difficult. **THEREFORE, THE PARTIES AGREE THAT, IN THE EVENT OF SUCH A BREACH, Contractor SHALL PAY TO THE CITY AS LIQUIDATED DAMAGES THE SUM OF THREE (3) TIMES THE DIFFERENCE BETWEEN THE ACTUAL AMOUNT OF WAGES PAID AND THE AMOUNT OF WAGES THAT SHOULD HAVE BEEN PAID.**

City

Contractor

By _____
Name: Mark Giovannetti
Title: Purchasing Officer
Date: _____

By _____
Name: Ken Westbrook
Title: President and COO
Date: _____

Exhibit F-1



Classification and Wage Determination

CONTRACT SCOPE: AIRPORT SHUTTLE BUS SERVICES

ISSUE DATE: January 28, 2013

Contracts governed by both the City of San Jose's Living Wage Policy (Resolution No. 68900) and its Prevailing Wage Policy (Resolution No. 61144) are subject to the Policy with the higher wage requirements.

PREVAILING WAGE RATES

Classification	Basic Hourly Pay Rate	Health Welfare & Pension	Vacation Minimum (10 Days)	Paid Sick Leave (6 Days)	Paid Holidays (9 Days)	Total Hourly Pay*
Shuttle Bus Driver	\$22.96	\$3.90	\$.88	\$.52	\$.80	\$29.06
Shuttle Bus Cleaners	\$18.44	\$3.90	\$.72	\$.43	\$.66	\$24.15

* The full amount of the total hourly wage must be paid directly to the worker, UNLESS the Contractor is making payments to a benefit plan. If the Contractor is making payments to a benefit plan, but the benefits being paid do not add up to the full amount of benefits listed above, the Contractor must pay the difference directly to the worker.

Breakdown of Benefits		
Paid Vacation (<i>Calculate at applicable hourly pay rate</i>)	After 1 year	10 Days – 80 Hours
	After 5 years	15 Days – 120 Hours
	After 10 years	20 Days – 160 Hours
	After 15 years	20 Days – 160 Hours
Paid Sick Leave	Six (6) paid Sick Days	
Paid Holidays	Nine (9) paid Holidays	

Hours and Days of Work

Employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half ($1 \frac{1}{2}$) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half ($1 \frac{1}{2}$) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh (7th) consecutive day of work in a workweek.

Exhibit F-2
Labor Compliance Workforce Statement

Page ____ of ____



**LABOR COMPLIANCE
WORKFORCE STATEMENT**

CONTRACTOR NAME: _____

CONTRACT: _____

In the chart below, list the name, prevailing wage or living wage classification(s) to be used, rate of pay and hire date for each employee expected to work on the above contract. See example below.

EMPLOYEE NAME	CRAFT/TRADE CLASSIFICATION	BASIC HOURLY RATE OF PAY (On City of San Jose Contract)	DATE OF HIRE (Indenture Date If Apprentice)
<i>Example: Bob Jones</i>	<i>Recycle Driver</i>	<i>\$24.28</i>	<i>6/1/2002</i>

**Questions regarding classifications allowed on San Jose projects should be directed to the
Office of Equality Assurance at 408-535-8430.**

**Exhibit F-3
Labor Compliance Fringe Benefit Statement**



**LABOR COMPLIANCE
FRINGE BENEFIT STATEMENT**

CONTRACTOR NAME: _____

CONTRACT: _____

I certify under penalty of perjury that fringe benefits are paid to the approved plans, funds, or programs as listed below:

Classification	Fringe Benefit Hourly Amount	Name of the Plan or Fund (Attach Premium Transmittal)
1.	Vacation	
Documentation of Plan contribution must be returned with this statement Please attach a copy of your most recent transmission into each medical, pension, or profit sharing plan account indicating worker name and amount of contribution.	\$	
	Health & Welfare	
	\$	
	Pension	
	\$	
	Apprentice	
	\$	
	Other (specify)	
	\$	
2.	Vacation	
	\$	
	Health & Welfare	
	\$	
	Pension	
	\$	
	Apprentice	
	\$	
	Other (specify)	
	\$	
3.	Vacation	
	\$	
	Health & Welfare	
	\$	
	Pension	
	\$	
	Apprentice	
	\$	
	Other (specify)	
	\$	

☐ All (or some) fringes are paid in cash by adding the amount to the employee's basic hourly rate.

Company Name (Please Print)

Name and Title (Please Print)

RD:RLT
08/14/2013

Date

Signature

Exhibit F-4
**EMPLOYEE WORK ENVIRONMENT
AND LABOR PEACE QUESTIONNAIRE**

SECTION I: Contractor INFORMATION

Contractor Name: _____ Date: _____
Address: _____
Phone: _____ FAX: _____
Prepared by: _____ Title: _____

SECTION II: EMPLOYEE HEALTH BENEFITS

1. Does your company provide a health insurance plan or program for employees?

☐ **NO**, we do not provide a health insurance plan or program for employees.

☐ **YES**, we do provide a health insurance plan or program for employees.

If the answer is no, does your company provide benefits in lieu of a health insurance plan? (Be specific. Describe on a separate sheet and attach.)

2. If the answer to Question 1 above is yes, please provide the following information:

2a. Please list the health insurance plan(s) or program(s) offered to your employees (use additional sheets if necessary)

2b. What is the contribution by the employee per pay period to this plan?

\$ _____ for single coverage, no dependents

\$ _____ for family coverage, with dependents

Pay period is (check one) ☐ Monthly ☐ Weekly ☐ Bi-weekly ☐ Semi-monthly

2c. What is the contribution by the company, per employee, per pay period, to this plan?

\$ _____ for single coverage, no dependents

\$ _____ for family coverage, with dependents

2d. How long must the employee be employed by your company before they are eligible for health insurance coverage?

_____ Days ☐ Month ☐ Year ☐

2e. What job classifications of your employees are covered by the insurance program outlined above? (Use additional sheets if necessary.)

2f. Does your health insurance coverage pertain to part-time and full-time employees?

Yes ☐ No ☐ If no, please explain.

SECTION III: EMPLOYEE BASIC BENEFITS

1. Indicate the basic benefits your workers receive.

Years of Service	# of Vacation Days	# of Sick Days	# of Personal Days
After 1 year			
After 5 years			
After 10 years			

Other: (Explain.)

2. Indicate the paid holidays your workers receive by placing check mark to the left of each.

<input type="checkbox"/>	New Year's Day	<input type="checkbox"/>	Independence Day	<input type="checkbox"/>	Christmas
<input type="checkbox"/>	Martin Luther King Jr. Day	<input type="checkbox"/>	Labor Day	<input type="checkbox"/>	Floating Holiday
<input type="checkbox"/>	Washington's Birthday	<input type="checkbox"/>	Veterans' Day	<input type="checkbox"/>	Other:
<input type="checkbox"/>	Memorial Day	<input type="checkbox"/>	Thanksgiving Day	<input type="checkbox"/>	Other:

3. Do you allow for unpaid leave? ☐ Yes, please explain policy ☐ No

SECTION IV: EMPLOYEE COMPLAINT PROCEDURE

1. Does your company have an employee complaint resolution procedure?

☐ **YES** (Attach a copy of our company's employee complaint resolution procedure.

☐ **NO**, our company does not have an employee complaint resolution procedure.

SECTION V: COMPLIANCE WITH STATE AND FEDERAL WORKPLACE STANDARDS

Have any of the following State or Federal Regulatory agencies obtained final orders or final judgments finding a violation by your company of State or Federal law relating to the treatment of your employees? If your answer is yes to any of the questions below, please provide the date of entry of the final judgment or order, the agency which obtained the order, and a brief description of the nature of the violation on a separate sheet of paper.

1. California Department of Fair Employment and Housing Department (DFEH).

☐ **NO**, our company has not had any final judgment or administrative order.

☐ **YES**, our company has had final judgment(s) or administrative order(s).

2. California Department of Industrial Relations (Cal OSHA).

☐ **NO**, our company has not had any final judgment(s) or administrative order(s)

☐ **YES**, our company has had final judgment(s) or administrative order(s).

3. California Department of Industrial Relations (Minimum Wage, hours or working conditions) Labor Board

☐ **NO**, our company has not had any final judgment(s) or administrative order(s).

☐ **YES**, our company has had final judgment(s) or administrative order(s).

SECTION VI: LABOR PEACE ASSURANCE

The City of San Jose has determined that labor peace is essential to the proprietary interests of the City in this RFP to ensure that contractors conducting business on City property are good employers, provide a good work environment without encroaching on the contractor's ability to conduct business and comply with federal, state and City employment policies.

Proposers are free to submit any plan or program that demonstrates a good work environment and prevents disruption in services due to disputes with its employees. The following examples are provided solely for purpose of example. They are not intended to limit a proposer in any way from submitting any plan or program that assures labor peace.

1. Any existing or proposed plans, benefits or programs undertaken by the employer to attract and retain qualified employees and assist in providing uninterrupted service through the employer's workplace condition and practices (Example: Company's Employee Handbook);
2. A written dispute resolution policy or procedure (Example: Company's Employee Handbook);
3. A written grievance policy or procedure (Example: Company's Employee Handbook);
4. The formation of a joint labor-management committee – A committee comprised of employees from both labor and management to discuss issues of mutual concern;
5. A collective bargaining agreement between a firm and a recognized union;
6. Labor neutrality provision – A labor neutrality provision means the proposer, as employer, will accept a union's campaign to convince the employer's employees about the merits of unionization and also refrain from offering arguments against unionization;
7. "Card Check" provision – A "card check" provision means the proposer/employer would agree to allow representatives from a labor union to come on company property during work hours for the purpose of organizing its workforce and collecting union authorization cards. The Proposer/Employer pledges to recognize the union if a certain number of signed union authorization cards are collected. This type of provision is typically coupled with a Labor Neutrality provision;
8. Any other information, plan or program regarding how the proposer will protect against disruptions in service due to disputes with its employees during the Term and any Option period of the Agreement.

Proposers are required to respond in the space provided below and attach any documents to show how it will prevent labor disputes or unrest from occurring during the term of the City Agreement. If the Questionnaire is incomplete or inadvertently omitted from your proposal, it will not result in immediate disqualification of your proposal. However, failure to submit this Questionnaire with your proposal or incomplete submittals, may result in a lower overall score.

Proposer provides the following Labor Peace Assurance(s):

SECTION VII: WARRANTY AND REPRESENTATION

By signing below, proposer warrants and represents that if proposer is successful, the above listed benefits and complaint procedure will be maintained for the term of the agreement, and proposer declares that, to the best of its ability, it intends to ensure that essential services and labor for which it has been contracted will be provided efficiently and without interruption.

Company: _____

Signature: _____

Name: _____

Title: _____

Date: _____

RD:RLT
08/09/2013

EXHIBIT G
LICENSE OF AIRPORT PREMISES
BETWEEN THE CITY OF SAN JOSE
AND
VEOLIA TRANSPORTATION SERVICES, INC.

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LICENSE OF AIRPORT PREMISES

RECITALS

- A. Whereas, the City is empowered to authorize the use of portions of the San Jose International Airport ("Airport"); and
- B. Whereas, the Licensee desires to receive the nonexclusive privilege of conducting the Authorized Activities on the Licensed Area, subject to the terms and conditions of this License; and
- C. Whereas, the City and Licensee have entered into an Agreement for Airport Shuttle Bus Service contemporaneous with this License; and
- D. Whereas, under the authorization contained in Section 25.08.1300 (titled "Commercial Activity") of the San Jose Municipal Code, the Director has determined that: (1) adequate space is available to accommodate Licensee's activities under this License consistent with the space requirement of other Airport uses; and (2) Licensee's activities under this License are appropriate for operation at the Airport.

LICENSE TO USE AIRPORT PREMISES BETWEEN CITY OF SAN JOSE AND VEOLIA TRANSPORTATION SERVICES, INC.

1. DEFINITIONS AND SUMMARY OF TERMS

Each reference in the body of this License to specific terms or phrases set forth in this Section shall having the specific meanings and/or contain the respective express information set forth below. To the extent there is a conflict between the information in this Section and any more specific provision of this License, such more specific provision shall control. Any term not defined in this License shall be as defined in the Agreement For Airport Shuttle Bus Service between the City and Licensee.

"Authorized Activities" (§3 Licensed Area and Authorized Use) shall mean use of the Licensed Area further described in Section 3 of this License solely for the purposes of office and storage space.

"Days" unless otherwise specified, shall mean calendar days.

"Director" shall mean the person designated Director of Aviation by City, or such other person, division, department, bureau or agency as may be designated by the City Council or the City Manager from time to time to exercise functions equivalent or similar to those now exercised by the Director of Aviation; the term also includes any person expressly designated by the Director of Aviation to exercise rights and/or obligations empowered in the "Director" under this License.

"Effective Date" (§ 2- Term) means the date beginning September 1, 2013 through August 31, 2017 inclusive, subject to any exercise of options to extend the term.

“Environmental Laws” (§4- Standards of Operation) shall mean and include all federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational, health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state superlien or environmental clean-up statutes.

“Event of Default” or “Events of Default” shall have the meaning ascribed to it in Section 15.1

“Expiration Date” shall mean the date of expiration or earlier termination of the Agreement for Airport Shuttle Bus Service Between the City of San Jose and Veolia Transportation Services, Inc.

“Hazardous Materials” (§4 - Standards of Operation, §28- Hazardous Materials - Prohibitions & Restrictions) shall mean any and all (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws, and (b) any materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and (c) any substance, product, by-product, waste or any other material which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational, health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

“Laws” means all present and future applicable judicial decisions, statutes, laws, ordinances, regulations, building codes, Airport rules and regulations adopted from time to time, regulations, orders and requirements and policies of all governmental authorities including without limitation city, state, municipal, county, federal agencies or the federal government, the TSA and the FAA, and their departments, boards, bureaus, commissions and officials and such other authority as may have jurisdiction including, without limitation, any regulation or order of a quasi-official entity or body.

“License” shall mean this License between City and Licensee.

“Licensed Area” shall have the meaning ascribed to it in Section 3.

"Municipal Code" means the San Jose Municipal Code, as amended from time to time.

“Person” means an individual, a corporation, a partnership, a joint venture or any other form of business association.

“Summary” means Section 1 of this License.

"Tax" shall mean and include any assessment, license, charge, fee, imposition, or levy imposed by any governmental body.

“Licensee” shall mean Veolia Transportation Services, Inc.

“Licensee Address” (§36- Notice) means the following information for notices to Licensee:

Name:	Mike Girard
Title:	General Manager
Mail Address:	1311 – A Airport Blvd San Jose, CA 95110 408-970-9873
Street Address: (If different)	
Telephone:	
Fax No.:	
E-mail Address: (email Notices cannot be used in lieu of Notice Required under Section 0 of this License)	mhgirard@comcast.net

“Term” (§2) shall have the meaning ascribed to it in Section 2 below.

2 TERM

2.1 Term

The term of this License shall commence on the "Effective Date". The term of this License shall extend until the date of expiration or the date of termination, whichever is earlier, of the Agreement for Airport Shuttle Bus Service between the City and Licensee, of which this License is attached to as an exhibit.

2.2 Holdover

It is not the intent of this License to create any tenancy by Licensee beyond the expiration or termination date hereinabove set forth. Any holding over after the expiration or earlier termination of the term of this License shall be conditioned upon the approval of the City Council and on terms and conditions approved by the City Council.

3. LICENSED AREA AND AUTHORIZED USE

- 3.1.** Licensee is hereby authorized to use and occupy the Licensed Area solely for the purpose of conducting the Authorized Activities. Licensee shall not be permitted any use of the Licensed Area, the Terminals or the Airport except for the Authorized Activities as provided in this License. Licensee understands and agrees that the rights and privileges conferred to it under this License are non-exclusive as to use of Airport facilities relative to other commercial users of the Airport, and that the Airport shall not be restricted in any manner from granting exclusive or priority uses of Airport facilities to others. The City retains and may grant the other operators authority to use or occupy portions of the Airport.
- 3.2.** Licensee shall not conduct the activities authorized by this Section at any location on the Airport other than the location referred to herein, unless authorized under another written agreement between the City and Licensee.

4. STANDARDS OF OPERATION

- 4.1** Licensee shall ensure that its employees and agents make regular inspections of the Licensed Area for the purpose of maintaining the degree of cleanliness, condition of repair and operational ability of the Licensed Area required under this License.

- 4.2** Licensee shall conduct its operations at the Airport and on the Licensed Area in such manner as will reduce to the minimum that it is reasonably practicable, the emanation from the Licensed Area of dust, noise, vibration, movement of air fumes and odors so as not to interfere unreasonably with the use of adjoining Licensed Area and operations of others at the Airport.
- 4.3** Licensee shall not do anything, or permit anything to be done, in or about the Licensed Area that might: (i) invalidate or be in conflict with, or cause cancellation of, the provisions of any insurance policies covering the Licensed Area, the Airport or any property located thereon; (ii) result in a refusal by casualty insurance companies to insure the Licensed Area, the Airport or any property located thereon in amounts and on terms and conditions required by City; (iii) subject City to any liability or responsibility for injury or damages to any person or property by reason of any activity, use, business operation or other practice conducted on the Licensed Area; or (iv) cause any increase in any insurance rates applicable to the Licensed Area, the Airport or any property located thereon.
- 4.4** Licensee shall not use or knowingly allow the use of the Licensed Area for the purpose of unlawfully selling, serving, using, storing, transporting, keeping, manufacturing or giving away alcoholic beverages or any controlled substance specified in Division 10 of the California Health and Safety Code.
- 4.5.** Licensee shall not store, use or dispose of Hazardous Materials on the Airport, including the Licensed Area, nor cause, permit or allow any officer, agent , employee, contractor, permittee or invitee of Licensee to store, use or dispose of Hazardous Materials on the Airport or on the Licensed Area.
- 4.6** Any vehicles containing explosive materials or explosive liquids are expressly prohibited inside any structure on the Licensed Area.
- 4.7** Licensee shall at all times keep any areas free and clear of obstructions to provide ingress into and egress from adjoining properties.
- 4.8** Spray painting and/or welding are prohibited on the Licensed Area, unless prior authorization is obtained from the Director and all applicable fire and safety codes are met.

5 CONSIDERATION

In exchange for the privilege of this License, Licensee shall perform all of its obligations under this License and the Agreement for Airport Shuttle Bus Services Between the City of San Jose and Veolia Transportation Services, Inc.

6 MAINTENANCE OF LICENSED AREA

6.1 Maintenance.

6.1.1 Licensee shall be obligated at all times throughout the term of this License, without cost to City, to maintain the Licensed Area in good appearance, repair, and safe condition, except for ordinary wear and tear, and in a condition otherwise satisfactory to Director. Licensee shall maintain all improvements on the Licensed Area whether installed by Licensee or City. Licensee shall be responsible, also without cost to City, for the repainting of the interior of any space occupied hereunder, replacing of light fixtures (including bulbs, tubes, ballasts and transformers), miscellaneous hardware, window glass and floor coverings. All maintenance shall be performed diligently and shall be of a quality equal to or better than the original work in materials and workmanship, and all work shall be subject to the prior written approval of Director. When used in this License, the term "maintenance" shall include all repairs, alterations, maintenance and/or removals deemed necessary by Director.

6.1.2 Director shall be the sole judge of the quality of maintenance. City's employees and agents may, during normal business hours, enter upon the Licensed Area to determine if maintenance satisfactory to Director is being performed. If Licensee fails to perform the maintenance or the maintenance is not being performed in a manner satisfactory to Director, Director will notify Licensee in writing. If the maintenance is not so performed by Licensee within fifteen (15) calendar days after receipt of written notice, City shall have the right (but not the obligation) to enter upon the Licensed Area and perform the necessary maintenance and upon receipt of the notice of maintenance cost, including, but not limited to labor, materials and equipment, Licensee agrees to promptly reimburse City for the maintenance cost incurred, plus an additional amount equal to ten (10%) percent thereof for administrative overhead. The demand for any payment by City shall be prima facie evidence that the expense incurred was

necessary and reasonable and that such expense was incurred by City on behalf of Licensee.

6.2 Trash and Refuse

Licensee, at its sole cost and expense, shall keep and maintain the areas occupied by Licensee clean and free of rubbish, dirt, garbage, and other waste matter at all times and shall provide and pay for regular janitorial and other service reasonably necessary for the proper maintenance of the Licensed Area in a clean and sanitary manner. Licensee, at its sole cost and expense, shall cause all dirt, rubbish, trash, garbage and other waste matter to be removed daily from the Airport and deposited in suitable containers for regular removal from the Airport.

6.3 Waste or Nuisance

Licensee shall not commit, cause, maintain or permit or suffer, or allow to be committed, caused, maintained, or permitted, any legal waste upon the Licensed Area, the Terminals or the Airport, nor any public or private nuisance, or injury nor any improper or unlawful use on the Airport or surrounding areas of the Airport, nor any other act or thing, or omission to act, which may in any way disturb the quiet enjoyment of or obstruct or interfere with the rights of, any other tenant, concessionaire, licensee, invitee, or occupant of any portion of the Licensed Area, the Terminals or the Airport or any portion thereof. Licensee shall maintain in safe, good and clean condition all areas of the Airport where Licensee conducts its operations.

6.4 Restroom Facilities

Licensee shall arrange for proper maintenance of the restrooms and shall be **solely** responsible for all maintenance of the restrooms, other than the sanitary and water line, which are maintained by the City. If Director determines that the restrooms are not properly maintained, Director may arrange for such maintenance, at Licensee's expense.

7 IMPROVEMENTS.

7.1 Construction of Improvements.

Any improvement, alteration or construction of improvements on the Licensed Area, other than with respect to any furniture, trade fixtures and equipment which are and remain movable and unattached to the Licensed Area, shall be performed to the satisfaction of Director. Prior to the commencement of any improvement, alteration or construction upon the Licensed Area, Licensee at its sole cost and expense shall obtain all necessary permits and approvals from all appropriate Departments of the Airport, City and/or from any other

governmental entity, as required by law. Licensee shall be responsible for the payment of all engineering, inspection and review fees required by City or any other governmental entity.

7.2 Approval of Plans and Specifications.

- 7.2.1** Licensee shall not make any improvements to or upon the Licensed Area, or any subsequent alterations or additions to the improvements, without the prior written approval of Director. Full and complete plans and specifications for all work, facilities, and improvements, and time required to complete same, shall be submitted to and receive the written approval of Director before work or construction is commenced. First-class standards of design and construction will be required in connection with all such work, facilities, and improvements. All construction must conform to the plans and specifications as approved by Director and the established architectural design scheme for the Airport, and must be subject to City's requirements and guidelines.
- 7.2.2** All improvements, equipment, and fixtures, including the plans and specifications therefore, constructed or installed by Licensee, its agents, or contractors, shall conform in all respects to applicable statutes, ordinances, building codes, and rules and regulations. The approval given by Director under the immediately preceding subparagraph shall not constitute a representation or warranty as to such conformity; responsibility therefore shall at all times remain with Licensee.
- 7.2.3** Licensee shall obtain at its sole cost and expense all governmental reviews and approvals (including any approvals of the Director or any other City official), licenses, and permits which are, or may be, required and are necessary to install the improvements and/or alterations and to conduct the Authorized Activities, including, but not limited to, all plans and specifications approvals, site development reviews, development permits, and building permits. The costs and expenses which are payable by Licensee to secure these reviews and approvals may include City engineering and inspection fees ("E&I Fees"), and a check in the amount of ten percent (10%) of total estimated construction cost must be deposited with the City with submission of construction plans, as a deposit amount toward payment of such E&I Fees. Any unused E&I Fees in excess of amount deposited shall be refunded to Licensee. Any amount incurred by the City in excess of the deposit amount will be invoiced to and payable by Licensee. Licensee shall comply with all conditions, restrictions or contingencies imposed

upon, or attached to, the governmental approvals, licenses, and permits described herein.

7.2.4 Eight (8) copies of plans for all improvements or subsequent changes or alterations shall be given to Director for review prior to commencement of construction. Director, after giving his final approval, shall return to Licensee one (1) approved copy for its records. Additional copies shall be provided to the Director or City upon request.

7.2.5. Upon completion of all work, Licensee shall provide to Director two (2) completed sets of as-built drawings, a CAD disk if Licensee produces drawings on disks, and a breakdown which shows all costs incurred for such works. Licensee agrees that, upon the request of Director, Licensee will inspect the Licensed Area jointly with Director to verify the as-built drawings.

7.3 Remediation of Asbestos-Containing Materials.

If, in the construction of any improvements to or upon the Licensed Area, Licensee causes disturbance to or damage of any asbestos and/or asbestos-containing materials, Licensee shall be solely responsible for the costs of remedying the disturbance or damage, including, without limitation, the removal of any asbestos and asbestos-containing materials.

8. TITLE TO IMPROVEMENTS, ALTERATIONS AND REPAIRS

All improvements, alterations or construction of improvements made to the Licensed Area by Licensee (other than furniture, trade fixtures and equipment which are and remain movable and unattached to the Licensed Area) and additions and alterations thereto made upon the Licensed Area shall be and remain the property of Licensee until the termination of this License, at which time the improvements may, at the option of Director in accordance with Section 27, become the property of City. Licensee shall execute any documents which Director feels necessary to further evidence the transfer of title to improvements from Licensee to City, including a quitclaim deed and/or bill of sale. Any failure by Licensee to execute any such transfer documents, however, shall not limit or preclude the transfer of title from Licensee to City provided in this Section.

9. PAYMENT BOND – CONSTRUCTION

Prior to the commencement of any construction, alteration or repair hereunder which exceeds Five Thousand Dollars (\$5,000) in cost, Licensee shall furnish to City and file with the City Clerk, at no cost to City, a payment bond. In addition to the specific requirements set forth below, the bond shall be issued by a surety, be in a sum of not

less than one hundred percent (100%) of the total cost of the contract or contracts for the construction, alteration, demolition or repair of the Licensed Area and/or improvements, be satisfactory to and approved by City's Risk Manager and Director, and be approved as to form by the City Attorney for City. Immediately upon completion of any improvement, Licensee shall record in the Official Records of the Santa Clara County Recorder a notice of completion complying with the requirement of California Civil Code Section 3093.

9.1 Payment Bond

The payment bond shall guarantee the prompt payment to all persons named in California Civil Code Section 3181, and of amounts due under the Unemployment Insurance Code, amounts required to be deducted, withheld or paid over to the Employment Development Department from the wage of employees of the contractor and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code, and reasonable attorneys' fees. The payment bond shall protect City from any liens, liability, losses or damages arising therefrom, and shall name Licensee's contractor or contractors as principals, and City as obligee.

10 ACCEPTANCE OF LICENSED AREA

10.1 Licensee has carefully examined the Licensed Area and is satisfied with the current condition, subject to any improvements to be constructed by Licensee in accordance with Section 7. Licensee acknowledges that no representation or warranty has been made by City concerning the nature, quality or suitability for Licensee's business of the Licensed Area or the Airport, or the existence of any Hazardous Materials in, on, upon, under or about the Licensed Area or the Airport, and Licensee acknowledges that it shall have no rights against City by reason of such matters or any claimed deficiencies therein. Licensee accepts the Licensed Area "as is", and as being in good, safe and sanitary condition satisfactory for Licensee's use.

10.2 Licensee acknowledges that City has made no representations or warranties with respect to the Licensed Area, the Airport or this License except as expressly set forth in this License, and no rights, easements or licenses, implied or otherwise, are or shall be acquired by Licensee unless expressly set forth in this License.

11 UTILITY SERVICES

11.1 Licensee has inspected and accepts the utility hookups in the Licensed Area. Licensee shall be responsible for the cost of all telephone services to the Licensed Area. City shall be responsible for the cost of all other utility services to the Licensed Area in place at time of Licensee's

inspection of the Licensed Area. Any additionally utility connections beyond those in the Licensed Area at the time of Licensee's inspection are Licensee's responsibility. Installation of such additional utility connections shall be at Licensee's sole cost and expense and are subject to the provisions of Section 7 regarding Licensee improvements. The location, relocation and coordination of all utilities and telephone facilities to service the Licensed Area shall be subject to the prior written approval of the Director. Licensee shall, upon request by the Director, cap off all utility connections installed by Licensee and restore the affected areas to their original condition upon expiration or earlier termination of this License. Notwithstanding the foregoing, the pro-rata payment provisions of this paragraph shall not apply in the event Licensee directly pays utility providers for utility services.

- 11.2** Licensee agrees that it shall take reasonable steps and any such other action which it deems necessary to protect Licensee's equipment from any damage that may be caused to such equipment in the event of any deficiency, impairment and/or interruption of utility services. As more fully set forth in Section 7, Licensee waives any and all claims and/or causes of action against City for any such damages.

12 SECURITY MEASURES.

- 12.1** Licensee agrees to abide by all provisions in the Airport Security Program (ASP) approved by the Transportation Security Administration (TSA), and agrees to institute and carry out all security measures as provided in said plan, the Airport Rules and Regulations, and any active Security Directives issued by the TSA. Any violations of the ASP, Rules and Regulations or Security Directives which result in fines to City by the TSA, and which are caused by Licensee, its officers, agents, or employees or invitees, will be assessed to Licensee by City and will be deemed to be payable by Licensee to City following invoice thereof by City to Licensee.
- 12.2** Licensee shall be solely responsible for instituting and carrying out specific security measures above and beyond that required by the ASP, Rules and Regulations and Security Directives in the areas where it is authorized to operate to prevent vandalism or damage to persons or property, trespassing and other criminal acts. City shall be responsible only for providing general security throughout the Airport and shall not be liable for any vandalism or damage to persons or property that may occur in the areas of Licensee's operation.

- 12.3** Licensee understands and acknowledges that City reserves the right to implement or change security measures that may limit public access to the Airport or the Terminals. In such event, Licensee waives all rights against City for such limitation, and City shall not be liable to Licensee for any amount, including compensation.

13 SIGNS/ADVERTISING

Licensee shall not install, erect, affix, paint or place any sign, lettering or other advertising device or media in or upon any portion of the Airport or the Licensed Area without the prior written consent of Director. Any and all signs, lettering or other advertising device or media, or any replacement thereof, which may be permitted by Director shall be subject to, and comply with, present and future Airport signing standards. Any and all such advertising device or media shall be removed by Licensee at its sole cost and expense upon termination or expiration of this License, without injury or damage to or defacement of any part of the Licensed Area or of the Airport. Licensee will promptly restore to their original condition those portions of the Licensed Area or Airport from which such advertising device or media have been so removed.

14 ASSIGNMENT OR TRANSFER

- 14.1.** Licensee shall not assign, sublicense, convey, sell, pledge, hypothecate, encumber by deed of trust, mortgage, or other instrument, or otherwise transfer this License, the Licensed Area or any part thereof, or any rights of Licensee hereunder, whether voluntarily or by operation of law, without the prior written consent of City.
- 14.2** A transfer within the meaning of this Section shall include, but is not limited to, the following: the incorporation of an individual Licensee and the transfer of Licensee's rights hereunder to the corporation which is not wholly owned by Licensee; in the event that Licensee is a partnership, incorporation of Licensee and transfer of Licensee's rights hereunder to the corporation, or the withdrawal or addition of any partner to Licensee's partnership; in the event that Licensee consists of co-tenants, the incorporation of Licensee and transfer of its rights hereunder to the corporation, or the voluntary or involuntary transfer by any one or more co-tenants of his, her or its rights hereunder to his, her or its co-Licensee or to a third person; in the event that Licensee is a corporation, the change in the ownership of fifty percent (50%) or more of the capital stock of Licensee; and, in the event that Licensee is an unincorporated association, the incorporation of Licensee and the transfer of its rights hereunder to the corporation, or the change in fifty percent (50%) or more of the membership of the association.

- 14.3** In determining whether to consent to such a transfer, City may consider, without limitation: (i) the financial condition and responsibility of the proposed transferee; (ii) the type of activity proposed to be conducted by such transferee at the Airport; (iii) the capabilities and expertise of the proposed transferee to manage and operate the proposed activity; (iv) the past service record of the proposed transferee, (v) references of the proposed transferee; and (vi) any cost to City associated with such proposed transfer. In addition, City's consent to any proposed transfer under this License may be conditioned upon, among other things, the express written assumption by the proposed transferee of Licensee's obligations under this License and/or performance of required or necessary repairs or maintenance to the Licensed Area.
- 14.4** City may require payment by Licensee of any processing fee established by City pursuant to a resolution or ordinance for reviewing the proposed transfer and preparing any documents in connection therewith. Licensee's failure to provide City with full, complete and necessary information, or to pay the processing fee, shall be sufficient cause for City to deny consent to, or to refuse to review, the proposed transfer.
- 14.5** The consent of City to any transfer described in this Section shall not relieve Licensee of its obligation to obtain the further consent of City for any subsequent transfer. Any attempt to transfer without the consent of City shall be void, and shall constitute an Event of Default.

15 BREACH OF LICENSE

15.1 Events of Default

An event of default shall occur under this License upon the occurrence of any of the following events (severally "Event of Default" and collectively "Events of Default"):

- A. Licensee shall have violated the provisions of Section 4.4; or
- B. Licensee shall have failed to maintain any insurance required under Section 18; or
- C. Licensee shall have failed to perform any term, covenant, or condition of this License to be performed by Licensee, except those referred to in the immediately preceding three subparagraphs, and Licensee shall have failed to cure same within ten (10) days after written notice from City; provided, however, that if the nature of Licensee's default is such that more than ten (10) days are

reasonably required for its cure, then Licensee shall not be deemed to be in default if Licensee commences such cure within said ten (10) day period and thereafter diligently prosecutes such cure to completion and to the satisfaction of Director; or

- D. Any representation or warranty made by Licensee hereunder shall have been false or misleading in any material respect as of the date on which such representation or warranty was made; or
- E. Licensee shall have made a general assignment of its assets for the benefit of its creditors; or
- F. Licensee shall have assigned or otherwise transferred its interest in this License in violation of the provisions contained in this License whether voluntarily or by operation of law; or
- G. Licensee shall have failed to occupy the Licensed Area or to maintain continuous operations at the Airport, in each case, for any thirty (30) consecutive days, have been dispossessed by process of law or otherwise, or have otherwise abandoned the Licensed Area; or
- H. A court shall have made or entered any decree or order: (i) adjudging Licensee to be bankrupt or insolvent; (ii) approving as properly filed a petition seeking reorganization of Licensee or an arrangement under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or any state thereof; (iii) appointing a receiver, trustee or assignee of Licensee in bankruptcy or insolvency or for its property; (iv) directing the winding up or liquidation of Licensee and such decree or order shall have continued for a period of sixty (60) days; or (v) Licensee shall have voluntarily submitted to or filed a petition seeking any such decree or order; or
- I. The sequestration or attachment of or execution or other levy on Licensee's interest in this License or the Licensed Area or any improvements located thereon shall have occurred and Licensee shall have failed to obtain a return or relicense of such property within thirty (30) days thereafter, or prior to sale pursuant to such levy, whichever first occurs; or
- J. The occurrence of any act or omission on the part of Licensee which operates to suspend, revoke or terminate any certificate,

permit, contract, franchise, approval, authorization or power necessary for Licensee to lawfully conduct the operations which Licensee is required or permitted to conduct on the Licensed Area or on the Airport; or

- K. Any lien shall be filed against the Licensed Area because of any act or omission of Licensee, and shall not be discharged or contested by Licensee in good faith by proper legal proceedings within twenty (20) calendar days after receipt of notice thereof by City; or

15.2 Remedies.

Upon an "Event of Default", City shall have the following remedies, in addition to all other rights and remedies provided by law, equity or otherwise under this License, to which City may resort cumulatively, or in the alternative:

- A. City may, at any time without notice and without any obligation to do so (implied or otherwise), and upon condition that it be for the account and at the expense of the Licensee, and without a waiver of such breach, perform any act which if performed by Licensee would otherwise cure the breach. If in so doing City is required or elects to pay any monies or do any acts which will require the payment of any monies or the incurring of any costs or expenses, Licensee covenants to pay to City upon demand by City the sum or sums of money paid or incurred by City, together with interest at the maximum rate allowed by law plus costs and damages. The receipt of any payment by City shall be prima facie evidence that the expense incurred was necessary and reasonable and that such expense was incurred by City on behalf of Licensee.
- B. City may, at its election, terminate this License upon written notice of termination in which event this License shall terminate on the date set forth in such notice. Any termination under this paragraph shall not relieve Licensee from the payment of any sums then due to City or from any claim for damages previously accrued or then accruing against Licensee. In no event shall any one or more of the following actions by City, in the absence of a written election by City to terminate this License, constitute a termination of this License:

- (i) Appointment of a receiver or keeper in order to protect City's interest hereunder; or
 - (ii) Any other action by City or its agents intended to mitigate the adverse effects of any breach of this License by Licensee, including, without limitation, action to maintain and preserve the Licensed Area or any action taken to relet the Licensed Area or any portions thereof for the account of Licensee and in the name of Licensee.
- C. This License shall not terminate following an Event of Default and an abandonment of the Licensed Area unless City gives Licensee written notice of its election to terminate this License. No act by or on behalf of City intended to mitigate the adverse effect of such breach, including those described by the immediately preceding subparagraphs (i) and (ii), shall constitute a termination of Licensee's right to possession unless City gives Licensee written notice of termination.
- D. In the event City terminates this License upon the Event of a Default, City shall be entitled to damages in the following sums:
 - i. Any other amount necessary to compensate City for all detriment proximately caused by Licensee's failure to perform its obligations under this License or which in the ordinary course of things would be likely to result therefrom, including, without limitation, the following: (a) expenses for cleaning, repairing or restoring the Licensed Area; (b) expenses for altering, remodeling or otherwise improving the Licensed Area for the purpose of reletting, including installation of licensehold improvements (c) costs of carrying the Licensed Area such as insurance premiums thereon, utilities and security precautions; (d) expenses in retaking possession of the property; and (e) late payment fees and court costs.

16 WAIVER OF BREACH

The waiver by City of any breach of any term, covenant, condition or provision herein contained shall not be deemed to be a waiver of any subsequent breach of such term, covenant or condition. The consent or approval by City to any act of Licensee requiring City's approval shall not be deemed to waive or render unnecessary the need for City's consent or approval to or of any subsequent similar act of Licensee. No waiver,

consent or approval by City shall be effective unless made by a duly authorized representative of City.

17 INDEMNITY AND WAIVER OF CLAIM.

17.1 Indemnity

Licensee, for and on behalf of its directors, officers, employees and agents, covenants and hereby agrees to indemnify, defend, protect and hold harmless City, its officers, employees, contractors and agents, from and against any and all claims, demands, damages, obligations, liabilities, losses, costs, expenses, penalties, suits or judgments, at any time received, incurred or accrued by City, its officers, agents, employees, contractors or members of the public using Airport facilities, arising out of or resulting in whole or in part from any act (or failure to act) of Licensee, its officers, employees, contractors, agents, permittees or invitees, or which results from their noncompliance with any Laws respecting the condition, use, occupation or safety of the Airport or the Terminals, or any part thereof, or which arises from the Authorized Activities or which arises from Licensee's failure to do anything required under this License, except as may arise from the sole active negligence or the willful misconduct of City, its officers, employees or agents. City's right to full indemnity hereunder shall arise notwithstanding that principles of joint, several or concurrent liability or comparative negligence, might otherwise impose liability on City pursuant to statutes, ordinances, regulations or other Laws. All of Licensee's obligations under this Section are intended to apply to the fullest extent permitted by law and shall survive the expiration or sooner termination of this License. In an action or claim against City in which Licensee is defending City, City shall have the right to approve legal counsel providing City's defense. The provisions of Section 33 regarding the ADA shall not limit Licensee's indemnification under this provision.

17.2 Assumption of Risk

Licensee agrees to and covenants that it shall voluntarily assume any and all risk of loss, damage or injury to the person or property of Licensee, its directors, officers, employees, agents, and contractors which may occur in, on, or about the Terminals, or the Airport at any time and in any manner, except such loss, injury, or damage as may be caused by the sole active negligence or the willful misconduct of City, its officers, employees or agents. The indemnification obligations of Licensee shall include the obligation of Licensee to defend, indemnify, protect and hold harmless City, its officers, agents or employees, from and against fines, costs, claims, damages, obligations, suits, judgments, penalties, proceedings, causes of action, losses, liabilities or costs arising under the

Americans With Disabilities Act, which arise from Licensee's activities under this License.

17.3 Licensee Waiver

Licensee, as a material part of the consideration to be rendered to City under this License, hereby waives all claims or causes of action against City, its officers, agents, contractors or employees which it may now or hereafter have for damage to its operations (including, without limitation, any interruption thereof), or to goods, wares, merchandise or other property on or about the Airport, and for injuries or death to persons on or about the Airport, from any cause or causes arising at any time, except as may arise from the sole active negligence or willful misconduct of City, its officers, agents or employees.

By way of example and not limitation, save and except as arises out of the sole active negligence or the willful misconduct of City, its officers, agents, contractors or employees, Licensee hereby waives any and all claims or causes of action which it may now or hereafter have against City, its officers, agents, contractors or employees (a) for loss, injury or damage sustained by reason of any deficiency, impairment and interruption of any water, electrical, gas, plumbing, air conditioning or sewer service or system serving any portion of the Airport; (b) for any loss, injury or damage arising or resulting from any negligent act or omission of any other Licensee, subtenant, contractor, airline, Licensee or occupant of the Airport, or any person who uses the Airport with or without the authorization or permission of City; (c) from the flight of any aircraft of any kind and all kinds in, through, across, or about any portion of the airspace above the Airport; (d) from noise, vibration, currents and other effects of air, illumination, and fuel consumption, or fear thereof, arising or occurring from or during the flight of any aircraft or from or during the use by aircraft of the Airport, including but not limited to, landing, storage, repair, maintenance, operation, run-up, and take-off of such aircraft and the approach and departure of aircraft to or from the airport; and (e) for any loss or damage to the property of, or injury or damage to Licensee, its officers, agents, employees, contractors, subtenants or any other person whomsoever, from any cause or causes arising at any time because of Licensee's uses or occupancy of such building or of the Airport, or its operations thereon.

18 INSURANCE.

18.1 Required Insurance Coverage

Prior to commencing any work or operations under this License, Licensee at its sole cost and expense and for the full term of this License and all

extensions thereof, shall obtain and maintain or shall cause to be obtained and maintained insurance against claims for injuries to persons or damages to property which may arise from or in connection with the activities of Licensee and its agents, employees and contractors, meeting at least the minimum insurance requirements set forth in **Exhibit D** on terms and conditions and in amounts as required by City from time to time and with insurers acceptable to City. City shall not be obligated to take out insurance on Licensee's property. Licensee shall provide City with certificates of insurance or copies of all policies and such endorsements as may be required by City.

18.1.1 From time to time at the request of the Risk Manager of the City of San Jose ("Risk Manager"), Licensee shall provide a written statement of the replacement cost of the Licensee Improvements, with a copy to the Director.

18.2 Waiver of Subrogation

City and Licensee hereby mutually agree that so long as their respective insurance carriers concur, any fire and extended coverage insurance policies carried on properties which are the subject of this License shall include a waiver of subrogation against the other party hereto, provided that such waiver of subrogation applies only to subsequent loss.

19 BAILEE DISCLAIMER

It is hereby understood and agreed that City in no way purports to be a bailee, and is therefore not responsible in any way for any damage to the property of Licensee, Licensee's contractors, agents, employees and invitees.

20 RIGHT TO ENTER

City reserves and shall have the right by its officers, employees, agents and contractors to enter into and upon the Licensed Area at all reasonable times (and in emergencies at all times):

- A. To make any inspection Director may deem expedient or desirable for the proper enforcement of the covenants, conditions, restrictions, limitations and provisions of this License;
- B. To install, construct and maintain, repair, replace and use any and all public utilities, sewer lines, drainage lines, water lines, water systems, irrigation lines, electrical lines, fuel lines and any municipal uses and appurtenances thereto, either above, on or below the surface of, in, along and/or across the Licensed Area;

- C. To otherwise maintain the Licensed Area, the building in which the Licensed Area is located and the Airport, or to do any other repair, maintenance, alteration or removal under the conditions set forth herein; or
- D. To post notices of nonresponsibility for improvements, alterations or repairs if and when City shall desire to do so;

When reasonably necessary, City may temporarily close entrances, doors, corridors, elevators or other facilities in connection with the foregoing. City shall use reasonable efforts not to cause any interruption of Licensee's operation. Any action taken by City under this Section shall be without liability on the part of City for loss or damage that may be sustained by Licensee thereby, and without such action by City being construed as a termination of this License or a relicense of Licensee from the duty of observing and performing any of the provisions of this License.

21 TAXES; ABSENCE OF LIENS

21.1 Payment by Licensee

Licensee shall pay before delinquency and without notice or demand, any and all taxes, (including without limitation any gross receipts income tax or excise tax) charges or penalties which shall be levied, imposed, or assessed against any of Licensee's licensehold interest, Licensee's business, or upon Licensee for the privilege of conducting business within the Licensed Area. Any such payment made under this Section shall not reduce the amount of charges or any other fee that is required to be paid by Licensee to City under the provisions of this License.

21.2 Possessory Interest

Licensee recognizes and understands that this License may, but is not intended to, create a real property possessory interest that may be, but is not intended to be, subject to real property taxation, and that Licensee may be subject to the payment of real property taxes levied on such interest. If Licensee receives any notice or claim that its interest in this License is subject to assessment for a possessory interest or other ad valorem tax, Licensee shall promptly notify City of the payment of same. City agrees to reimburse Licensee for any lawfully imposed possessory interest or other ad valorem tax. In consideration of City reimbursing Licensee for Licensee's payment of any such possessory interest or other ad valorem tax, Licensee agrees to comply with any written direction by City with respect to such taxes, including, but not limited to, protesting same, petitioning for equalization and litigating the amount or legal validity

of any such taxes, and to nominate City's City Attorney as its attorney and legal representative with respect to such directions and such taxes. All expenses associated with or related to any directions so given by City, or said representation, with respect to such taxes shall be borne by City. Notwithstanding anything to the contrary contained in this Section, Licensee shall promptly pay before delinquency any and all possessory interest or ad valorem taxes assessed upon any personal property owned or possessed by Licensee with respect to its performance of the Authorized Activities, and not be entitled or claim any reimbursement or compensation therefor from City.

21.3 No Liens

Licensee shall not permit or suffer any liens to be imposed upon the Airport or any building or structure thereon as a result of its activities without promptly discharging the same, provided, however, that Licensee may, if it so desires, contest the legality of same following prior written notice to City. In the event of a contest, Licensee shall provide a bond in an amount and in a form acceptable to City immediately following request therefor by City.

21.4 Tax – Hold Harmless

Licensee shall protect, defend, indemnify and hold City, including the Airport, and any improvements now or hereafter in the Licensed Area, free and harmless from and against any liability, loss, or damage resulting from any taxes, assessments, or other charges required by this License to be paid by Licensee and from all interests, penalties, and other sums imposed thereon and from any proceedings to enforce collection of any such taxes, assessments, or other charges.

22 DAMAGE OR DESTRUCTION

22.1 Destruction Covered by Insurance

In the event improvements on the Licensed Area are damaged by any casualty which is covered under an insurance policy required to be maintained pursuant to this License, Licensee shall repair such damage as promptly as reasonably possible in accordance with Section 7 and this License shall continue in full force and effect, without any payment of any damages or other amounts by City to Licensee.

22.2 Destruction Not Covered by Insurance

In the event the improvements on the Licensed Area are damaged by any casualty not covered under an insurance policy required to be maintained pursuant to this License, then City (through Director) may, at City's option,

give written notice to Licensee within thirty (30) days after the date of occurrence of such damage of City's intention to cancel and terminate this License as of the date of the occurrence of the damage. Regardless of whether or not City elects to terminate this License, if such damage is caused by an act or omission of Licensee, its agent, servants or employees, then Licensee shall promptly repair such damage, at its sole cost and expense, in accordance with Section 7.

22.3 Survival of Obligation to Repair

Licensee's obligation pursuant to this Section 7 to repair any damage or destruction that occurs during the term of this License shall survive the Expiration Date or earlier termination of this License.

23 COMPLIANCE WITH LAWS

23.1. This License is issued by City subject and subordinate to all existing and future agreements between the City and the United States of America, and Licensee shall act in compliance therewith. Licensee shall, at its sole cost and expense, comply with and conform to all Laws applicable to or affecting, directly or indirectly, Licensee, the Licensed Area, or Licensee's operations and activities under this License. Further, Licensee shall not do anything in, on, or about the Licensed Area, the Terminals, or the Airport, nor bring anything that is prohibited by a standard form of fire insurance policy or that in any way would increase or affect the then existing rate of fire or other insurance required to be carried upon the Licensed Area, the Airport, or the Terminals or any part thereof, or any of their contents, or that will cause a cancellation of any insurance policy covering the Licensed Area, the Airport, or the Terminals or any part thereof or any of their contents. Licensee agrees to observe and obey all rules and regulations adopted by City from time to time with respect to the use of all Airport property, terminal buildings and related facilities.

The judgment of any court of competent jurisdiction, or the admission of Licensee in any action or proceedings against Licensee, whether City be a party thereto or not, that Licensee has violated any such law, statute, ordinance, rule, regulation, order or requirement in the use of the Licensed Area or the Airport shall be conclusive of that fact as between City and Licensee.

In connection with its operations in or about the Airport, Licensee shall pay to City all amounts, fees, charges and taxes due City under any ordinance, resolution or other applicable law governing activities in or about the Airport.

- 23.2** Without limitation of the foregoing, Licensee shall conduct its operations in accordance with all applicable United States Department of Transportation authorizations and Federal Aviation Administration Operating Certificates. Licensee shall obtain any and all permits and licenses required by City or other governmental entity as are necessary to conduct the activities authorized under this License.

24 AGREEMENTS WITH UNITED STATES

This License shall be subordinate to the provisions of any Federal agreement relative to the use, operation or maintenance of the Airport, the execution of which Federal agreement has been or may now or hereafter be required as a condition precedent to the obtaining and/or expenditure of Federal funds for the development of the Airport, and any properties acquired in conjunction with its operations. Licensee agrees that to the extent that any such Federal agreement shall affect Licensee and its use of the Licensed Area and the Airport, Licensee shall act in compliance therewith.

25 GRANT AGREEMENT COVENANTS

Licensee acknowledges that City is subject to Federal grant agreement obligations as a condition precedent to granting of funds for improvement of the Airport, and, accordingly, agrees to, and agrees to be bound by, the following covenants provided by the Federal Aviation Administration as they may apply to Licensee:

25.1 Licensee for itself, its personal representatives, successors-in-interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this License for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, Licensee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21 Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

25.2 Licensee for itself, its personal representatives, successors-in-interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that: (i) no person on the grounds of race, color, or national origin shall be excluded from participation, denied the benefits of, or be otherwise subjected to discrimination in the use of the facilities; (ii) that in the

construction of any improvements on, over, or under the Licensed Area and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (iii) that Licensee shall use the Licensed Area in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as the Regulations may be amended.

- 25.3 That in the event of breach of any of the above nondiscrimination covenants, City (through Director) shall have the right to terminate this License, and to re-enter and repossess the Licensed Area, and hold the same as if this License had never been made or issued. This provision does not become effective until the procedures of 49 Code of Federal Regulations Part 21 are followed and completed including expiration of appeal rights.
- 25.4 Licensee shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service. Licensee may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.
- 25.5 Without limiting the generality of any other terms or provisions of this License, noncompliance with Provision 25.4 above shall constitute a material breach thereof and in the event of such noncompliance City (through Director) shall have the right to terminate this License and the estate hereby created without liability therefore or, at the election of City or the United States, either or both said governments shall have the right to judicially enforce Provisions 25.1, 25.2, 25.3 and 25.4 of this Section 25.
- 25.6 Licensee agrees that it shall insert the above five (5) provisions in any agreement by which Licensee grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the Licensed Area.
- 25.7 Licensee assures that it will comply with pertinent statutes, executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting

from federal assistance. This Section 25.7 obligates Licensee or its transferee for the period during which federal assistance is extended to the Airport, except where federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, this Section 25.7 obligates Licensee or transferee for the longer of the following periods: (i) the period during which the property is used by City or any transferee for a purpose for which federal assistance is extended, or for any purpose involving the provision of similar services or benefits; or (ii) the period during which City or any transferee retains ownership or possession of the property. In the case of contractors, this Section 25.7 binds the contractors from the bid solicitation period through the completion of the contract.

- 25.8 City reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or views of Licensee, and without interference or hindrance.
- 25.9 City reserves the right, but shall not be obligated to Licensee, to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Licensee in this regard.
- 25.10 This License shall be subordinate to the provisions and requirements of any existing or future agreement between City and the United States, relative to the development, operation or maintenance of the Airport.
- 25.11 There is hereby reserved to City, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Licensed Area. This public right of flight shall include the right to cause in the airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the Airport.
- 25.12 Licensee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event any future structure or building is planned for the location(s) of its activities, or in the event of any planned modification or alteration of any present or future building or structure situated at the Airport.
- 25.13 Licensee, by accepting this License expressly agrees for itself, its successors and assigns, that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the Licensed Area

to a height above the mean sea level that would exceed FAR Part 77 standards or elevations affecting the Airport navigable airspace. In the event the aforesaid covenants are breached, City reserves the right to enter upon any area utilized by Licensee and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of Licensee.

25.14 Licensee, by accepting this License, agrees for itself, its successors and assigns that it will not make use of the Licensed Area in any manner which might interfere with the landing and taking off of aircraft from San Jose International Airport or otherwise constitute a hazard. In the event this covenant is breached, City reserves the right to enter upon the Licensed Area and cause the abatement of such interference at the expense of Licensee.

25.15 It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. §1349a).

25.16 This License and its provisions shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of Airport or the exclusive or non-exclusive use of Airport by the United States during the time of war or national emergency.

26 MODIFICATIONS FOR GRANTING FAA FUNDS

In the event that the Federal Aviation Administration requires, as a condition precedent to granting of funds for the improvement of the Airport, modifications or changes to this License, Licensee agrees to consent in writing upon the request of City to such reasonable amendments, modifications, revisions, supplements or deletions of any of the terms, conditions, or requirements of this License as may be reasonably required to enable City to obtain Federal Aviation Administration funds, provided that in no event shall such changes materially impair the rights of Licensee hereunder. A failure by Licensee to so consent shall constitute a breach of this License.

27 SURRENDER OF LICENSED AREA

27.1 The voluntary or other surrender of this License by Licensee, or a mutual cancellation thereof, shall not work a merger. On the last day, or sooner termination, of this License, Licensee shall quit and surrender, in good condition and repair (ordinary wear and tear excepted), the Licensed Area and all alterations, additions, improvements and betterments which may

have been made in or to the Licensed Area, except: (i) movable and unattached furniture and trade fixtures installed at the expense of Licensee; and (ii) such other property, if any, which Licensee is expressly authorized in writing by Director to remove from the Licensed Area.

27.2 Licensee shall ascertain in writing from Director not less than thirty (30) days prior to the end of the term of this License whether Director desires to have Licensee remove any construction, betterment, alterations or additions which may have been made by Licensee upon the Licensed Area and to restore to the condition as when received (reasonable use and wear and acts of God excepted). If Director should so desire, then Licensee shall remove any such construction, betterment, alterations or additions and restore the Licensed Area at its sole cost and expense. Any failure by Licensee to so notify Director shall not relieve Licensee of its obligations under this subparagraph.

27.3 Licensee shall, on or before the end of the term of this License, remove all personal property owned by it (except such as it may be required to surrender under the provisions of the two immediately preceding paragraphs) from the Licensed Area, and all such property not so removed prior to any vacation, abandonment, dispossession or surrender of the Licensed Area shall be deemed, at the option of Director, to have been abandoned by Licensee. City may, at the option of Director, retain any such property so abandoned by Licensee or remove and/or dispose of such property. Licensee shall reimburse City for any costs or expenses incurred by City in removing and/or disposing of such property promptly upon demand by City.

28 HAZARDOUS MATERIALS - PROHIBITIONS AND RESTRICTIONS

Licensee shall at all times comply with the provisions of this License, including those provisions of Exhibit H, regarding Hazardous Materials.

29 STATEMENTS, RECORDS AND INFORMATION

Licensee represents and warrants to City that all statements, records, reports, certifications and other information submitted by Licensee to City have been true and accurate and covenants that all future statements, records, reports, certifications and other information submitted by Licensee to City will be true and accurate in all respects.

30 GIFTS

Licensee is familiar with City's prohibition against the acceptance of any gift by a City officer or designated employee, which prohibition is found in Chapter 12.08 of the San Jose Municipal Code. Licensee agrees not to offer any City officer or designated employee any gift prohibited by said Chapter. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this License by Licensee. In addition to any other remedies City may have in law or equity, City may terminate this License for such breach as provided in Section 15 of this License.

31 HEIRS, SUCCESSORS AND ASSIGNS

All of the covenants agreements, conditions and undertakings herein contained shall apply to and bind the representatives, heirs, executors, administrators, successors and/or assigns of all the parties hereto.

32 REPRESENTATIONS AND WARRANTIES

- 32.1.** If Licensee executes this License as a corporation, then Licensee and the persons executing this License on behalf of Licensee represent and warrant that the individuals executing this License on Licensee's behalf are duly authorized to do so in accordance with a duly-adopted resolution of the Board of Directors of Licensee, a copy of which is delivered to Director on execution hereof, and in accordance with the bylaws of Licensee, and that this License is binding upon Licensee in accordance with its terms.
- 32.2** If Licensee is a partnership or joint venture, at least two (2) partners or each of the joint ventures, as the case may be, shall execute this License on behalf of Licensee.

33 AMERICANS WITH DISABILITIES ACT

Licensee shall be solely and fully responsible for complying with the Americans with Disabilities Act of 2010 (ADA) in connection with: (i) the Licensed Area or any portion thereof and its operations thereon; (ii) removing physical barriers on the Licensed Area; (iii) providing auxiliary aids and services for use of the Licensed Area, where necessary or required; and (iv) modifying its policies, practices and procedures to comply with the ADA. Licensee shall develop a workplan to correct or avoid any violations or non-compliance with the ADA. Licensee shall deliver to the City, upon City's request, a copy of each such report and workplan. City's approval of or acceptance of any aspect of Licensee's activities under this License shall not be deemed or construed in any way as a representation that such item, activity or practice complies with the ADA. Licensee agrees to indemnify, defend and hold the City harmless from any and all costs incurred by City with respect to Licensee's failure to comply with the ADA.

Nothing herein shall relieve Licensee from the obligation to seek and obtain City's consent prior to commencing any construction, alteration or renovation pursuant to Section 7 hereof.

34 RELOCATION, EXPANSION OR CONTRACTION OF LICENSED AREA

In the event that implementation of the City's requirements for the Airport, changes in airlines or flight schedules, or other changes in business conditions necessitate the relocation, expansion or contraction of the Licensed Area, or any part thereof, Licensee shall, at Licensee's sole cost and expense, relocate all of its personal property on the Licensed Area, or any part thereof, in an expeditious manner only as may be permitted, directed or required by the Director.

Notwithstanding any provision of this Section to the contrary, City, at City's sole cost and expense, shall be responsible for the relocation of all Revenue Control System equipment located on the Licensed Area.

Amendments to this License which change or modify the description of the Licensed Area set forth in Section 3 above to specify in writing increases, decreases, or relocation of space may be executed on behalf of the City by the Director of Aviation.

35 MISCELLANEOUS

35.1 Consent

Unless expressly stated otherwise, whenever in this License the approval or consent of a party is required, such approval or consent must be in advance, shall be in writing and shall be executed by a person having the express authority to grant such approval or consent.

35.2 Controlling Law

Except as federal law may apply, the parties agree that this License shall be governed and construed by and according to the laws of the State of California.

35.3 Counterparts

This License may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

35.4 Entire Agreement

This instrument contains all of the terms and conditions entered into and made by and between the parties and may not be modified orally, or in

any manner, other than by an agreement in writing signed by all the parties hereto or their respective successors-in-interest.

35.5 Exhibits and Addenda.

All exhibits and addenda referred to herein, and any exhibits or schedules which may from time to time be referred to in any duly executed amendment thereto, are by such reference incorporated herein and shall be deemed a part of this License as if set forth fully herein.

35.6 Force Majeure

Neither party shall be deemed to be in default on account of any delay or failure to perform its obligations under this License which results from an act of God, acts of superior governmental authority, a strike, a boycott, a shortage of items, or any other cause beyond the reasonable control of such party.

35.7 Headings

The headings of the several paragraphs and sections of this License are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this License and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation of construction thereof.

35.8 Hold Harmless

Licensee shall defend, indemnify and hold City harmless from and against claims for any broker's commissions, finder's fee or other commission or fee relating to the leasing of the Licensed Area by anyone claiming by or through Licensee.

35.9 Joint and Several

If there be more than one Licensee designated in or signatory to this License, the obligations hereunder imposed upon Licensee shall be joint and several; and the term Licensee as used herein shall refer to each and every of said signatory parties, severally as well as jointly.

35.10 Material Considerations

Each and every term, condition, covenant and provision of this License is and shall be deemed to be a material part of the consideration for City's entry into this License, and any breach hereof by Licensee shall be deemed to be a material breach. Each term and provision of this License to be performed by Licensee shall be construed to be both a covenant and a condition.

35.11 Modification of License

This License shall not be modified, unless the parties first agree to and approve of such modification in writing.

35.12 No Assumption

The review, approval, inspection, examination or consent of City of or to any item to be reviewed, approved, inspected, examined or consented to by City shall not constitute the assumption of any responsibility by City for either accuracy or sufficiency of any item or the quality or suitability of such item for its intended use, but rather for the sole purpose of protecting City's interests. No third parties, including Licensee or persons claiming under Licensee, shall have any rights hereunder resulting therefrom or otherwise.

35.13 Number and Gender

Whenever the singular number is used in this License and when required by the context, the same shall include the plural and the masculine gender shall include the feminine and neuter genders.

35.14 Resolutions

Licensee shall submit a copy of any corporate resolution, if requested by City, which authorizes any director or officer to act on behalf of Licensee or which authorizes Licensee to enter into this License.

35.15 Severability

If a court of competent jurisdiction finds or rules that any Provision of this License is void or unenforceable, the remaining Provisions of this License shall remain in effect.

35.16 Successors and Assigns

The provisions of this License shall, subject to the provisions of this License concerning transfer, apply to and bind the successors and assigns of the parties hereto.

35.17 Licensee not an Agent of City

Licensee is not an agent, contractor or employee of City and nothing in this License nor shall any action of Licensee be construed in any way to constitute Licensee as an agent, contractor or employee of City for any purpose.

35.18 Time of Essence

Time is of the essence of this License and each of its provisions, and failure to comply with this provision shall be a material breach of this License.

35.19 Venue

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In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be vested in the state courts of California in the County of Santa Clara or in the United States District Court in the Northern District of California.

36 NOTICES

All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either party to the other, shall be in writing and shall be addressed as follows:

If to City, the same shall be addressed to:

Director of Aviation
c/o Airport Operations Manager, Landside Section
San Jose International Airport
1701 Airport Blvd., Suite B-1130
San Jose, CA 95110

If to Licensee the same shall be addressed to the address set forth in Section 1 , or to such other place as Director or Licensee, respectively, may notify the other in writing. All notices shall be sufficiently given and served upon the other party if sent by first-class U.S. mail, postage prepaid, or by facsimile to the facsimile numbers indicated herein for either party. All termination notices must be sent by certified mail, return receipt requested.

APPROVED AS TO FORM:

"City"
City of San José, a municipal corporation

Rosa Tsongtaatarii
Senior Deputy City Attorney

By _____
Name: Julia H. Cooper
Title: Director of Finance
Date: _____

"Licensee"
Veolia Transportation Services, Inc., a
California Corporation

By _____
Name: Ken Westbrook
Title: President and COO
Date: _____

EXHIBIT H AIRPORT SECURITY MEASURES

SPECIAL PROVISION NO. 11

SP11.01 DESCRIPTION. In the interest of safety and security, the Contractor is directed to acquaint his/her employees with the provisions of the following Federal Aviation Administration Advisory Circulars and Code of Federal Regulations:

- | | |
|------------------|--|
| 150/5370-2E | “Operational Safety on Airports during Construction” |
| 150/5200-18C | “Airport Safety Self-Inspection” |
| 49 CFR PART 1542 | “Airport Security” |

SP11.02 SPECIAL COORDINATION PROCEDURES. All coordination communications between the Contractor and the following parties will be through the Engineer:

- a. San Jose International Airport.
- b. Federal Aviation Administration.
- c. Transportation Security Administration

Conduct operations so that annoyance to patrons, visitors, and operating personnel will be held to an absolute minimum. Work or activity, which affects Airport operations or public on roadways or in buildings, shall be done only during hours designated by Owner and Engineer. This may require that Work or activity be done during odd hours, at night, and on weekends or holidays. Work or activity includes shutdowns of utilities and other Airport functions.

Limit operations to areas on which Work under Contract is being performed. Keep all equipment, supplies, and delivery of materials within designated staging areas. All use or occupancy shall be subject to prior approval by Owner and Engineer. Should such use or occupancy prove objectionable in any way, modify arrangements so as to eliminate the objection.

Prior to the start of construction meet with Owner and Engineer and verify flight schedule and become thoroughly familiar with rules and regulations pertaining to hazards to flying and also with control of vehicular traffic on Airport roads. Plan Work so that no unnecessary hazards to aircraft will be created. Advise Engineer of all hazards created by Contractor's operations.

SP11.03 OPERATIONAL REQUIREMENTS.

San Jose International Airport will be in continuous operation 24-hours-a-day during the entire construction period. Cooperate with the Engineer to facilitate and minimize conflict with Airport operations.

Schedule all Work that affects airport operations at least 3 weeks in advance and submit plans for this Work to the Engineer for approval. Schedule shall include dates,

hours of operation, type of equipment, work area, planned personnel/equipment movements and deliveries.

SP11.04 AOA PROJECT SECURITY REQUIREMENTS

SP11.04.01 AIRPORT SECURITY - GENERAL. Under the provisions of Title 49, CFR Part 1542, it has been determined that employees of the Airport, Airport tenants, contractors, and air carriers who have access to the controlled areas of the Airport are in positions where their actions can have a critical impact on the safety and security of the traveling public.

- a. Therefore, it is understood and agreed that if the Work, storage, or entry areas provide access to the aircraft ramps, taxiways, runways, or any other restricted areas of the Airport, the Contractor shall, at his own expense and cost, take whatever steps are reasonably necessary to prevent or deter persons and vehicles from unauthorized access to such areas. The Contractor shall take such further actions as may be necessary because of the nature of the Work, to insure continuing compliance with all applicable regulations relative to Airport security.
- b. No claim for additional compensation to the Contractor shall be considered if the Aviation Security Level (AVSEC) of the Airport is increased by decree of the TSA/DOT.
- c. The San Jose Police Department – Airport Division, under advisement of TSA security or Airport Operations personnel, can and will arrest and levy fines on individuals and companies for violations of security regulations.

SP11.04.02 SECURITY PLAN.

As part of the Contractors mobilization a Security Plan must be submitted. A coordination meeting must be established between the Contractor, Airport Security Coordinator and the Engineer to determine the qualifications for exemption to the ASP requirement. If approval for exemption is granted, the Contractor must sign a Letter of Agreement with the Airport that specifies the Airport Security Requirements applicable to the project.

The Security Plan shall include but is not limited to the following:

- a. A statement that all parts of the Airport Security Program (ASP) apply except as amended in the Contractor's Security Plan.
- b. The starting and ending dates of the Project.
- c. The name, address, and phone number of the Contractor.
- d. A list of 24-hour-a-day 7-days-a-week emergency contact name(s) and phone number(s).

- e. A brief description of Project.
- f. The names of Contractor employees to be badged, the type of badges to be requested, and a statement that there will be no unbadged or unescorted workers in the Project work area(s).
- g. A description of the planned access points to the secure area(s) and security measures that will be taken at the access point(s).
- h. Any other information that affects the existing Airport Security Plan.
- i. A 100 square inch photocopy of the company vehicle logo to be displayed on all vehicles that will be unescorted on the AOA. This will include general and subcontractor vehicles.
- j. A detailed description of any security fences, gates, or other equipment the Contractor intends to utilize to meet security requirements on the Airport. In the event that the Contractor alters the current security perimeter, indicate where AOA Security fence will be placed. Security fence must meet or exceed the standard defined by the Transportation Safety Agency (TSA) and the Airport.

The Security Plan must be on company letterhead and signed by a responsible officer of the company. Airport Police, Airport Operations, and the TSA will review it. The City has prepared a draft Security Plan, which has been reviewed by the TSA. Instructions for completing a Security Plan and a copy of this draft plan are attached at the end of this Section.

The Security Plan shall not be in force until the Airport Security Coordinator (ASC) approves it. The Contractor shall submit this plan to the Engineer at the pre-construction meeting. A Notice to Proceed will not be issued until this item is completed and approved.

1.04.03 Sensitive Security Information (SSI). SSI is a specific category of information that is protected against public release pursuant to 49 U.S.C 40119. Any items marked as Sensitive Security information must be controlled in accordance with 49 CFR 1520.7 and may only be released to persons with a need to know. Should copies of SSI information be made by the Contractor, dissemination of such copies must conform to provisions of the above statute. Unauthorized release may result in civil penalty or other action.

INSTRUCTIONS FOR COMPLETING A SECURITY PLAN:

1. Attached is a sample format for developing your Security Plan. It was designed to provide guidance to anyone who plans to operate on the SIDA/AOA
2. When using this guide please follow the format provided to include paragraph headings, spacing, and signature blocks.

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3. Instructions printed in standard typeface are provided to assist in structuring each paragraph and providing the required information. Items printed in Italics are to provide guidance in wording certain portions of the security plan and may be copied verbatim.
4. The last paragraph (Security Statement) shall be written exactly as shown - adding the company name where indicated.
5. An original signed copy of the Security Plan shall be submitted to the City. The original copy will be kept on file at Airport Operations, when approved by the Airport Security Coordinator. A copy will be furnished for your records. No keys / locks will be issued nor access granted until an approved Security Plan is on file with Airport Operations.

Company Letterhead

Security Plan

for

(Project Name)

Significant Dates:

Contract Start Date –
Contract completion date or duration -

Contractor Information:

This paragraph will contain the Company name, address and phone number(s)

Contractor Contact:

This paragraph will contain the names and telephone numbers of those personnel who can be contacted when necessary. It will include sufficient names and telephone numbers to insure that contact can be made on a 24 hr per day, 7-day per week basis.

Summary of Work:

This paragraph will summarize the work to be done. It will include the scope of the project, locations where work is to be performed and the nature of the work to be performed.

Personnel Access:

This paragraph will describe the badging plan to allow unescorted and escorted access to the Security Identification Display Area (SIDA) / Non-SIDA area for personnel

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involved in this project. Airport Master Plan Team will advise contractors as to the type of badging that will be required for the project (SIDA or Non-SIDA.) The following statements can be used as they apply:

The Gate(s) and/or Door(s) to be used for personnel access are:

Only SIDA/Non-SIDA badged personnel will be allowed unescorted access to the SIDA/Non-SIDA areas. Escorted personnel within the SIDA will wear an "Escort Required" badge and be within sight and sound of the SIDA badged individual providing escort. Escorted personnel outside the SIDA will be within sight and sound of a badged individual. All superintendents, foremen, gate guards, and escorts will

be SIDA/Non-SIDA badged. Workers who do not have their SIDA/Non-SIDA badge in their possession will be considered unbadged and must be escorted. There will be no unbadged or unescorted personnel on the SIDA/Non-SIDA areas.

NOTE: There will be [redacted] authorized representative(s) for (company name) who will be responsible for ensuring that all persons requiring unescorted access to the SIDA/AOA are properly badged. At the contractor's expense, all persons requiring unescorted access to the SIDA area will be fingerprinted by the Airport in accordance with 49 CFR Part 1542.209 to determine badge applicant eligibility.

Furthermore, (company name) understands that they will accept responsibility for control and accountability of all SJC SIDA / Non-SIDA badges issued to their employees, as well as those issued to the employees of their subcontractors. If a company employee or employee of a subcontractor is terminated, an authorized representative will confiscate his/her badge and **notify the Airport ID Badging Office immediately by calling (408) 277-4040. The confiscated badge must be returned to the Airport Badging Office immediately.**

Vehicle Access:

If the project requires vehicles to operate in the SIDA / Non-SIDA areas the following statement will be used:

NOTE: The vehicle access Gate(s) to be used are [redacted]

Only vehicles marked in accordance with the Airport Security Program (ASP) and operated by a person in possession of a valid SJIA ramp-driving permit will be allowed access to the SIDA/Non-SIDA areas. Vehicles which are not marked in accordance with the ASP will be escorted by a SIDA / Non-SIDA badged person who has a valid ramp driving permit whose sole function is the escorting of the unmarked vehicle. A properly marked vehicle will accompany vehicles in motion. A SIDA/Non-SIDA badged person may escort stationary vehicles. If within the SIDA, all occupants of the escorted vehicle will have "Escort Required" badges.

Contractors will coordinate with the SJC Badging and Identification office regarding registration of vehicles for operation on the SIDA/Non-SIDA areas and for issuance of ramp driving permits.

Access Point Security:

If the project requires that any SIDA/Non-SIDA access point be in a condition where it is not locked with an SJIA supplied lock or controlled by a functioning security badge card reader this paragraph will explain the measures used to provide security for that point.

NOTE: Any access point that is not locked with an SJPD-AD supplied lock or controlled by a functioning security badge card reader will be staffed by a SIDA/Non-SIDA badged person whose sole responsibility will be to monitor the gate to insure only authorized persons/vehicles enter the SIDA/Non-SIDA area.

If there are restrictions as to who may enter the SIDA/Non-SIDA area at an access point staffed by a contractor this paragraph will state those restrictions.

If other measures are to be used such as temporary fencing in lieu of locking the access point or returning it to card reader control when unattended, this paragraph will describe those measures. In addition there will be a statement that those measures must be inspected and approved by the Airport Security Coordinator (ASC) before utilization.

If temporary access points are to be constructed in addition to those access points installed and maintained by SJC, the ASC will approve any plans for that access point and inspect and approve the installed access point prior to it being put in operation. This paragraph will describe the nature, location and security measures for any such access point as well as state the approval process as stated above.

Key and Lock Control:

This paragraph will address control of any key(s) and lock(s) used to secure any SIDA/Non-SIDA access points when unattended. The following are sample statements to be used as they apply.

NOTE: If any SIDA/Non-SIDA access point is to be secured by a lock when unattended, it must be secured by a temporary Primus perimeter padlock issued and installed by SJPD-AD. If a chain is required in addition to the temporary Primus perimeter padlock, SJPD-AD will supply and install an approved security chain for that purpose. No other lock or chain will be used in lieu of or in addition to those supplied and installed by SJPD-AD.

The senior permanent on-site representative of the contractor will sign for not more than two (2) keys for each lock issued by SJPD - AD. If the key(s) are to be sub-issued to contractor employees, the contractor will maintain a key control log showing who has possession of the key(s).

Security Violations:

If this project requires that SJC SIDA/Non-SIDA badges be obtained, this paragraph will address the consequences of violating the SJC ASP and Airport Rules and Regulations. The following paragraph must be included in the security plan.

NOTE: (Company name) agrees to follow the SJC ASP and Airport Rules and Regulations concerning security issues. The company understands that violations of the ASP or Rules and Regulations can result in the issuance of Three Strikes citations and Administrative Citations. Repeated Three Strikes offenses can result in the revocation of unescorted privileges within the SIDA / Non-SIDA areas. Administrative Citations can result in fines of up to \$1,000 to be paid by the individual employee or company it is issued to. (Company name) also understands that they will be responsible for paying any security related fines assessed upon the Airport by the Transportation Safety Administration or other related governmental agency due to the actions of the (company name) employee's or employee's of their sub-contractor.

Modification of security equipment:

If this project affects the Automated Access Control System (AACS) or Closed Circuit Television System (CCTV) in any way, this paragraph will address the requirements to contract qualified companies to work with the systems.

(Company name) agrees to hire only companies authorized by Airport Operations to perform any work on or related to the AACS or CCTV systems.

Project specific security:

This Paragraph will address any additional factors specific to the project that affect SIDA/Non-SIDA security and are not covered in the preceding paragraphs. Describe

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the factors in detail and address the steps to be taken to meet ASP security requirements.

Restrictions on Vehicle Parking:

The Airport may require that no vehicles are to be parked/staged within 300' of an active terminal unless an Airport-authorized person whose sole responsibility is to search vehicles entering within the 300' perimeter inspects such vehicles. Any plan to complete such inspections must be submitted to and authorized by the Airport Security Coordinator or designee prior to implementation.

Restriction of Certain Items in the Sterile Area:

Any prohibited item (please contact San Jose Airport for the latest list if this section applies) that must be taken into the Sterile Area (defined as the area inside the terminal behind the security checkpoint) during hours when it is open to the public will be subject to the following:

No prohibited item shall be introduced into the sterile area unless the person carrying such an item is escorted at all times by a law enforcement officer. Prohibited items may only be taken through the security checkpoint when such checkpoint is closed to the public. All prohibited items must be removed prior to the opening of the sterile area unless prior arrangements are made. The contractor will make arrangements in advance to arrange for any required escort.

A temporary barrier may be constructed to effectively remove the work area from the sterile area. Any such barrier shall be approved by the ASC prior to being placed into service. Also, remember that diagrams are very helpful to allow us to understand how a company will meet the security requirements of the Airport. Please call Matt Davis at 408-277-4731 with any questions regarding the security plan.

Security Statement:

The following statement is to be included in this paragraph:

Veolia Transportation Services, Inc.: a California corporation

Veolia Transportation Services, Inc. herein agrees that all parts of the San Jose International Airport Security Program shall apply except as amended herein.

By: Veolia Transportation Services, Inc.: a California corporation

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(Typed name of Company Representative) Date
(Title of Company Representative)

Approved:

Airport Security Coordinator Date
Airport Operations Division, SJC

Federal Security Director Date
San Jose International Airport

SP11.04.03 CONTRACTOR/VENDOR ACCESS TO SECURED AREAS.

Contractors, subcontractors, their employees, vendors, truckers, and any other persons who are required to perform Work, which allows them to have access to the secured areas of the Airport, must either have been issued an Airport security badge or escorted by someone who has been issued an Airport security badge. This specifically includes trucks bringing materials into or out of the controlled areas.

All vehicles entering the AOA may be subject to inspections before access is granted. These inspections may include, but are not limited to; passenger compartments, cargo or storage compartments, vehicle contents and personnel.

Contractor shall advise the City and coordinate each and every airside movement with the City at least 24 hours in advance of the planned movement.

RESTRICTION OF CERTAIN ITEMS IN THE STERILE AREA:

- A. Any prohibited item (please contact Airport Operations or the TSA website - <http://www.tsa.gov>- click on Travelers & Consumers, then Air Travel for the latest list if this section applies) that must be taken into the Sterile Area (defined as the area inside the terminal behind the security checkpoint) during hours when it is open to the public will be subject to the following:

REFERENCE: *POLICY REGARDING INTRODUCTION/POSSESSION OF PROHIBITED ITEMS IN STERILE AREAS OF THE AIRPORT (11/04).*

A temporary barrier may be constructed to effectively remove the work area from the sterile area. Any such barrier shall be approved by the ASC prior to being placed into service.

SP11.04.04 SECURITY / IDENTIFICATION BADGES.

All persons employed by the Contractor or any sub-contractor who must have unescorted access to any area of the Airport controlled for security reasons, must obtain a security badge from the Airport and may be required to undergo a fingerprint based background check and security training prior to a badge being issued. Security badges must be worn on the employee's outermost garment and above the waist at all times when in the controlled area(s).

Airport security badges are not transferable or assignable. The security badges shall not be modified or altered any way, and must be safeguarded at all times.

Lost/stolen security badges must be immediately reported to the Airport ID Badging Office by calling (408) 277-4040.

- a. Maintain a list of accredited persons and keep records on file. Failure to comply with this requirement will subject the Contractor to a ten thousand dollar (\$10,000.00) fine per occurrence.
- b. Return all identification badges immediately upon expiration of holder's contribution to the Work. Return all identification badges to Airport within twenty-four hours upon receipt of written notice from the Airport. Failure to return identification badges after receipt of

written notice will subject the Contractor to a fifty-dollar (\$50.00) fine for each badge holder's first unreturned badge, and seventy-five dollars (\$75.00) for each badge holder's additional unreturned badges.

SP11.04.06 PROCEDURE TO OBTAIN AIRPORT BADGES:

General Procedure: Upon award of the contract, the Contractor shall submit on the appropriate forms to the engineer, a list of all individuals who will be authorized by the Contractor to accept responsibility for signing security badge applications. This Contractor representative shall first meet with the Airport to review badging procedures and then shall submit, in one packet, a letter on the company's letterhead listing all applicants, the applications, and other appropriate forms including a restricted area access request form that defines the locations Contractor employees must access. No applications will be accepted until the Airport and Contractor review applicable procedures. Applications take a minimum of 48-hours to process.

On contracts with a General Contractor and sub-contractors, the General Contractor shall assume responsibility for verifying and completing the appropriate forms for all sub-contractor badges. **Note: The Airport cannot and will not verify or sign for sub-contractors.**

Title 49 CFR Part 1542.209 requires that all applicants for SIDA or Sterile Area badges submit to and successfully pass a fingerprint-based Criminal History Records Check (CHRC) prior to issuance of a SIDA badge. CHRC results are generally available within five business days; however, the Airport does not have the ability to control the timing of receiving results and cannot be responsible for delays. Persons requesting Non-SIDA badges are not subject to CHRC verification.

Application: The authorized Contractor Representative shall submit, in one packet, a letter on the company's letterhead listing all applicants, the applications and other appropriate forms. This packet will be delivered to the Engineer for processing. Incomplete applications or other forms will be returned. Fax's or copies are not acceptable. Applications take a minimum of 48 hours to process.

Training: The FAA has mandated that all persons who require unescorted access to the Airport Operations Area (AOA) shall undergo security training. The Airport provides this training through a computer-based training system in the Airport Badging Office. Training is available from 7:00 am to 3:00 pm M-F. No appointments are necessary. The training takes approximately 2 hours. There is no cost for the class.

Badging: After successful completion of the training class and CHRC, if applicable, the Badging Office can issue the badge during business hours. The applicant must bring two forms of identification. One form of identification must be a verifiable picture identification issued by a county, state, or federal agency. Examples would be a current California Drivers License or Identification Card, U.S. passport or military identification.

Return of Badges and Employer's Obligation to Notify Airport of Termination of an Employee: The Badging Office must be notified verbally within 15 minutes of the termination of an employee, so that the active status of the of the security badge may be suspended. The 24-hour contact number for the Badging Office is (408) 277-4040. Badges of terminated

employees must be retrieved and returned to the Badging Office within one day after termination.

Lost or Stolen Badges: The Badging Office must be notified verbally within 15 minutes that a security badge has been lost or stolen. Written notification must reach the Badging Office within 8 hours of the verbal notice. There is a fee for the replacement of lost badges.

- | | |
|--|---------|
| A. First lost / unreturned badge fee | \$50.00 |
| B. Second and subsequent lost / unreturned badge fee | \$75.00 |
| C. First replacement badge fee | \$25.00 |
| D. Second and subsequent replacement badge fee | \$50.00 |

Return of Badges on Contract Completion: Badges must be returned to the Airport upon contract completion. Failure to return identification badges will subject the Contractor to a fifty-dollar (\$50.00) fine for each badge holder's first unreturned badge, and seventy-five dollars (\$75.00) for each badge holder's additional unreturned badges.

SP11.04.07 SECURITY VIOLATIONS

THREE STRIKES: SJPD-AD and Airport operations will issue Three Strikes citations to badged individuals for security violations. Multiple security violations can result in the individual being required to retake the SIDA class or the revocation of the SIDA badge entirely.

ADMINISTRATIVE CITATIONS: SJPD-AD and Airport Operations will issue Administrative Citations to SIDA badged individuals for the violation of San Jose Municipal Codes concerning Airport Security. The fines for Administrative Citations are to be paid by the individual and range from \$100 to \$1000. Administrative Citations will be issued for the following offenses:

- a. Piggybacking or Tailgating.
- b. Allowing Someone to Piggyback/Tailgate.
- c. Propping a Door/Gate and Leaving the Area.
- d. Not Waiting for a Vehicle Gate to Close After Entering/Exiting.
- e. Any other Security or Airport Rule and Regulation Violation as Determined by the Airport Security Coordinator.

OTHER CITATIONS: In addition to the Airport Administrative Citations, SJP-AD and TSA will issue citation for violations of any local and/or federal regulation.

1.04.08VEHICLE MEDIA PROGRAM: All vehicles entering the security area (the airside of the AOA security fence) must adhere to the Airports Vehicle Media Plan

All Contractor vehicles that enter the secure area and may be parked unattended in the AOA, shall have the company logo registered with the Badging Office and shall display the company logo at all times on both sides of the vehicle while in the secure area..

The Badging Office shall provide the applicable registration form(s) and issue the appropriate

parking permit(s) for these vehicles. Vehicles found to be in non-compliance with vehicle permit requirements are subject to citation and towing at the Contractor's expense. No employee parking is permitted inside the airside security fence. No personal vehicles are permitted to operate on the AOA unless properly escorted at all times.

Vehicle Parking Restrictions:

Vehicles will be prohibited from parking within 300 feet of a terminal building where passengers load or unload during a Homeland Security Advisory System (HSAS) threat level of Orange or Red, unless they have been inspected and cleared. Contractor may arrange to have vehicle inspections performed by making arrangements directly with the Airport Security Company (Atlas Security), by using its own staff or by contracting with another authorized security service. If Contractor elects to use its own or other contractor staff for inspections, the individuals performing the inspections shall be SIDA badged and shall have passed a computerized training course on vehicle inspections available at the airport training center at no cost. Contractor vehicles that enter the construction site on public roads and pass through inspection points established by the Airport will not have to be re-inspected.

These restrictions currently only affect vehicle parking outside the AOA on the public portion of the Airport roadways. Vehicles within the AOA and SIDA will be subject to inspection as they enter through the guarded vehicle gates and will not require re-inspection by the Contractor.

The Contractor shall not impact public access to or regular public traffic circulation serving the terminals or concourse areas. Contractor shall not mix service, delivery, or inter city truck type traffic with the public traffic.

Construction vehicles and equipment must maintain a 3 ft clearance, both on the inside and outside areas of the AOA fence (total of 6 ft plus width of fence secured area)

SP11.04.09 AIRPORT ACCESS GATE CONTROL. Where applicable, access to the Airport by the Contractor's personnel and equipment shall be primarily through a vehicle access gate to be constructed by the Contractor at a location designated by the Airport adjacent to the project site.

The access gate shall be secured with a padlock and chain provided by the SJPD-AD. The Contractor shall be given two keys for the lock by the SJPD-AD, and the Contractor shall be responsible for safeguarding these keys at all times.

While the Contractor gate is open, it shall be manned at all times by a Contractor gate guard that from an authorized security service that has a SIDA badge. Contractor shall be responsible for making arrangements for gate guards directly with an Airport authorized security service. The gate guard shall not perform any other work while the gate is open. Absence of the gate guard at any time while the gate is open shall be sufficient cause for the Engineer or the SJPD-AD to secure the gate and terminate the Contractor's work for the remainder of that day at no additional cost to the City. . # Strikes citations and/or Administrative Citations may also be issued for leaving an AOA access gate unattended.

The gate guard shall perform the following duties:

- a. Log in and log out each Contractor driver and vehicle admitted through the access

gate.

- b. Ensure each Contractor vehicle entering through the gate displays an approved checkered flag mounted above the highest point of the vehicle.
- c. Allow only Contractor vehicles or personnel to enter or exit the access gate.

The gate guard shall carry an operating cellular phone to immediately report all unauthorized entries or other security problems to the SJPD-AD by calling 9-1-1 or 408-277-8911 for direct access to SJPD.

Vehicle Identification:

No more than one (1) vehicle per Contractor or Subcontractor will be allowed at the job site unless otherwise authorized in writing by the Engineer.

All vehicles authorized access to airport-restricted areas shall conform to Airport Security requirements and to the following:

- a. Be owned or hired by the Contractor or Subcontractor. Airport Operations makes the final determination regarding vehicles that will be authorized access to the AOA.
- b. Be insured under company policy.
- c. Be properly identified and registered with the Airport badging office. Magnetic signs are acceptable, but must be visible & displayed on both sides of the vehicle at all times.

SP11.04.010 ESCORT PERSONS / FLAGGERS. For all vehicles operating in the Movement Area of the Airport, the Contractor shall provide an appropriate number of radio escorts for maintaining continuous contact with the FAA Control Tower for escorting the Contractor's labor force and equipment to/from the worksite.

One radio escort and one radio-equipped vehicle shall be at the work area at all times during each work shift to escort each vehicle delivering workers, equipment, or materials into the AOA work area.

Alternatively, the Contractor may provide an approved radio-equipped flagger at each active taxiway or other active aircraft area to escort vehicles across active aircraft areas. Drivers of all Contractors' vehicles shall be required to stop until radio contact is made with the FAA Control Tower, and the flagger indicates to the driver that crossing the active AOA is approved.

Radio Escort vehicles shall be equipped with an Airport-approved car-mounted radio. In addition, Radio Escort vehicles shall be equipped with an approved rotating, flashing yellow beacon, and construction flag and shall have contractor's company markings upon its sides.

The basic criteria for acceptability of a radio escort shall include:

- a. All radio escorts must be SIDA badged.
- b. The radio escort candidate possesses a current FAA Pilot's License and a current California Driver's License. Certain other personnel, as a function of their prior experience in airport operations may also be acceptable.

- c. The radio escort candidate shall contact the Engineer to set a meeting date with Airport Operations and coordinate attendance in a Movement Area Operations Class.
- d. At the appointed date and time, the candidate shall meet with Airport Operations, and a final determination of suitability will be made. The candidate shall bring his/her FAA Pilot's License and California Driver's License and a letter from his/her employer certifying that the EHV process has been successfully concluded. The successful candidate shall be briefed on appropriate airfield safety, communications, and emergency procedures.
- e. At this time the radio escort shall be given an Airport Rules and Regulations Handbook. The escort shall subsequently complete the ramp driver testing process.

SP11.04.11 PERSONS UNDER ESCORT. All persons under escort shall remain within sight and sound of the individual providing escort.

If within the SIDA, all escorted individuals must display "Escort Required" badges. These badges can be obtained from the City. Any escorted individuals within the SIDA not displaying an "Escort Required" badge will be removed from the SIDA and a Three Strike citation issued to the escorting individual.

SP 11-05 CONTRACTOR VEHICLE PARKING AND STAGING ON OR NEAR THE AIRPORT

Contractor must provide a diagram where all contractor and subcontractor vehicles, including employee vehicles, will park. Contractor vehicle parking may be restricted. Overnight employee parking is not permitted, unless prior approval by Airport Operations.

No contractor vehicles shall enter the airside of the AOA security fence unless required for delivery of equipment or materials to the project, and only when properly communicated and coordinated with Airport staff and an with an approved escort as defined in the Safety and Security Requirements Special Provisions. All vehicles entering the security area must adhere to the Airport's Vehicle Media plan. No employee parking is permitted inside the airside security fence.

Construction vehicles and material lay down areas on the Airport must maintain a 3 feet clearance, both on the inside and outside areas of the AOA fence (Total of 6 foot secured area).

Confine all field offices, construction sheds, or storage areas to the Contractor's Staging/Storage Area indicated on the Contractor Lay Down Plan. Recreational Vehicles (RVs), trailers, or any other type of live-in vehicles that provide shelter or lodging to contractor employees overnight or outside the scheduled work hours are not permitted.

Construction equipment such as cranes must be lowered to its resting position when not in use. During operating hours, cranes and all other construction equipment inside the AOA area must be flagged at all times and lit if operating during hours of darkness.

Do not permit any field offices and sheds within the Construction Area unless indicated on the Contractor Lay Down Plan.

Contractor must maintain clear access to and from any airport vehicle access road.

Contractor must submit a traffic plan reflecting traffic control measures whenever an Airport vehicle access road is affected.

Vehicular maintenance is not permitted inside the Lay Down Area/Parking areas unless in the case of an emergency. All vehicles staging must be in good working conditions. Mechanically unsafe vehicles must be towed from the site within 24 hours.

General housekeeping of the Lay Down Area/Construction parking area must be performed regularly and continuously to maintain the area in a clean condition and to eliminate the accumulation of general debris and Foreign Object Debris (FOD) damage.

SP11.06 FOREIGN OBJECT DEBRIS (FOD):

Contractor shall implement and continuously maintain an active program of containment and regular cleanup of construction debris, as addressed in the SJIA Safety Requirements.

SP11.07 FAR PART 77 COMPLIANCE:

1. Submittal and approval of FAA form 7460-1 ("Crane Permit") may be required before the Contractor uses a crane, pile driver, or other tall equipment on site.
2. Crane Permits may take 60 days or longer to be granted after submittal. Form 7460-1 is to be submitted directly to the FAA by the Contractor.
3. Flags and Lights: Flags will be required on the top of each crane, as well as lights for night time uses.
4. Crane height and travel distance must be indicated on the Contractor's submittal.

SP11.08 CONTRACTOR'S LAY DOWN AREA PLAN:

1. The Contractor shall be required to submit a Lay Down Area Plan indicating his/her work and materials storage areas. The Plan should, at a minimum, indicate the overall layout for the duration of the Work. Monthly changes to this Plan shall be indicated on the Contractor's Monthly Phasing Plan described elsewhere in this Section.
2. Emergency vehicle access: Show how emergency vehicles will access the work site.
3. Nearest fire hydrant: Indicate the nearest two active fire hydrants and distance from the work site.
4. Security maintained: If the current security perimeter is altered by the Project, indicate where AOA Security fence will be placed.
5. Utilities: Indicate existing utilities as well as temporary utilities within the Contractor's work Area.
6. Contractor vehicle parking: Indicate where all contractor vehicles will park. Contractor vehicle parking may be restricted.

No contractor vehicles shall enter the airside of the security fence unless required for delivery of equipment or materials to the project, and only with proper escort as defined in this

Section.

SP11.09 TRAFFIC REGULATION

1. Regulate traffic as required by the City of San Jose Department of Public Works "Standard Specifications" General Provisions, dated July 1992. Applicable articles for airport access gate control and escort is contained in this Section. Submit the Traffic Plan as required.
2. Personal Vehicles: All construction personnel's private vehicles are restricted from operation in the AOA.
3. Provide parking areas for Construction personnel use.

SP11.10 SPECIAL AIRPORT CLEANING PROCEDURES

1. Cleaning program: Establish an active ongoing program to eliminate any foreign objects which may cause damage to aircraft or cause personal injury to other persons.
2. The standard of cleanliness for active runways, taxiways, and ramp areas is defined by the Airport and does not permit any construction debris or dirt.
3. Air Operations Area (AOA) and Haul Routes: Immediately clean any debris tracked or dropped to eliminate hazard. End of workday cleanup will not suffice.
4. Any debris generated by this Project that is removed by the Airport will be at the Contractor's expense.
5. Equipment: Provide covered containers for deposit of waste materials, debris, and rubbish. Containers will only be allowed in approved locations as indicated on the approved Monthly
6. Phasing Plan.
7. Roadways and hard surface areas: The Contractor will provide two (2) vacuum truck sweepers to maintain clean and clear roadway and hard surface areas at all times as directed by the Engineer.

SP11.11 PROTECTION OF AIRPORT CABLES, CONTROLS, NAVAIDS, AND WEATHER BUREAU FACILITIES

SP11.11.01 DESCRIPTION.

The Contractor is hereby informed that there are installed on the Airport FAA NAVAIDS including without limitation ASR, UHF, and VHF receivers and transmitters; U.S. Weather Bureau facilities; airfield lighting systems; electric cables and controls relating to such NAVAIDS and facilities. Such NAVAIDS, Weather Bureau and other Airport facilities, and electric cables must be fully protected during the entire construction time. Work under this Contract can be accomplished in the vicinity of these facilities and cables only at approved periods of time.

Approval is subject to withdrawal at any time because of change in the weather, emergency conditions on the existing airfield areas, anticipation of emergency conditions, and for any other reason determined by the Engineer acting under the orders and instructions of the Airport management and the designated FAA representative. Any instructions to the Contractor to clear any given area, at any time, by the Engineer, the Airport Management or the FAA control tower (by radio or other means) shall be immediately executed. Construction work will be commenced in the cleared area only when additional instructions are issued by the Engineer.

Power and control cables leading to and from any FAA NAVAIDS, Weather Bureau and other Airport facilities, will be marked in the field by the local FAA Airway Facilities Sector personnel or the Engineer for the information of the Contractor before any work in their general vicinity is started. Thereafter, through the entire time of this construction, the Contractor shall not allow any construction equipment to cross these cables without first protecting the cable with steel boiler plate, or similar structural devices, for three feet either side of the marked cable route. All excavation within three feet of existing cables shall be accomplished by hand digging only.

This Special Provision intends to make perfectly clear the need for protection of FAA NAVAIDS, Weather Bureau and other Airport facilities, and cables by this Contractor at all times.

The Contractor shall immediately repair, at his/her own expense, with identical material by skilled workmen, any underground cables serving FAA NAVAIDS, Weather Bureau and other Airport facilities, which are damaged by his/her workmen, equipment, or work. Prior approval of the FAA must be obtained for the materials, workmen, time of day or night, method of repairs, and for any temporary or permanent repairs the Contractor proposes to make to any FAA NAVAIDS and facilities damaged by the Contractor. Prior approval of the Engineer must be obtained for the materials, workmen, time of day or night, and for the method of repairs for any temporary or permanent repairs the Contractor proposes to make to any other Airport facilities and cables damaged by this Contractor.

Should the repair require splicing it shall be spliced at the discretion of the local FAA Airway Facilities Sector Manager as to who shall perform the Work. Where the FAA performs the Work it shall be at the Contractor's expense. No Work shall be back filled or covered prior to approval by the Airway Facilities Sector Manager.

SP11.12 PAYMENT.

Airport safety and security shall be paid for at the Contract Lump Sum Price stated in the Bid Schedule. The price shall constitute full compensation including Contractor overhead and profit for furnishing all labor, equipment, tools, incidentals, and other items necessary to accomplish this item.

Payment shall be made under:

Item SP 11-12 Airport Safety and Security – per Lump Sum

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END OF SECTION SP11

EXHIBIT I

HAZARDOUS MATERIALS

In addition to complying with the provisions set forth earlier in this License and the Agreement For Airport Shuttle Bus Service Between the City of San Jose and Veolia Transportation Services, Inc., Licensee agrees to the following provisions:

1. Notification of Release. Licensee shall be solely and fully responsible for notifying the appropriate public agencies of any Hazardous Material release which occurs on the Premises, or is caused by or results from the activities of Licensee, Licensee's officers, agents, employees, contractors, permittees or invitees on the Airport other than the Premises. Licensee shall immediately notify City of any Hazardous Material release which occurs on the Premises, regardless of whether the release was caused by or results from Licensee's activities or is in a quantity that would otherwise be reportable to a public agency, or which occurs on the Airport other than the Premises and is caused by or results from the activities of Licensee, Licensee's officers, agents, employees, contractors, permittees or invitees, regardless of whether the release is in a quantity that would otherwise be reportable to a public agency.
2. Liability. Licensee shall be solely and fully responsible and liable for:
 - (a) storage, use or disposal of Hazardous Materials on the Airport, by Licensee, Licensee's officers, agents, employees, contractors, permittees or invitees;
 - (b) any Hazardous Material release which is caused by or results from the activities of Licensee, Licensee's officers, agents, employees, contractors, permittees or invitees on the Airport;
 - (c) any Hazardous Material release that commences during the term of the License on the Premises, unless the release was caused by the sole negligence or willful misconduct of City, City's officers, agents, employees, contractors or permittees or solely by migration of Hazardous Materials onto the Premises.
3. Prevention of Release. Licensee shall take all necessary precautions to prevent its activities from causing any Hazardous Material release to occur on the Airport, including, but not limited to any release into soil, groundwater, or the City's sewage or storm drainage system.
4. Obligation to Investigate and Remediate. Licensee, at Licensee's sole cost and expense, shall promptly investigate and remediate, in accordance with requirements of all applicable Environmental Laws:
 - (a) any release or danger of release of Hazardous Material on the Airport other than the Premises, including, but not limited to, into soil or groundwater, or the City's sewage or storm drainage system, which, was caused, or results, in whole or in part

from the activities of Licensee, Licensee's officers, agents, employees, contractors, permittees or invitees;

(b) any release or danger of release of Hazardous Material which commenced during the term of this License and which is discovered on the Premises, unless the release was caused by the sole negligence or willful misconduct of City, City's officers, agents, employees, contractors or permittees or solely by migration of Hazardous Materials onto the Premises.

In addition to all other rights and remedies of City hereunder, if Licensee does not promptly commence, and diligently pursue to remediate, any such release, or danger of release, of Hazardous Materials, City, in its discretion, may pay, to have same remediated and Licensee shall reimburse City within fifteen (15) business days of City's demand for payment. The failure to commence remediation and provide City with a schedule for diligent completion of the remediation within thirty (30) days after discovery of such release, or danger of release, of Hazardous Material shall constitute prima facie evidence of failure to promptly commence remediation. The demand for payment by City shall be prima facie evidence that the expense incurred was necessary and reasonable and that such expense was incurred by City on behalf of Licensee.

5. Indemnification. Licensee shall defend, indemnify and hold City harmless from and against all loss, damage, liability (including all foreseeable and unforeseeable consequential damages) and expense (including, without limitation, the cost of any required cleanup and remediation of the Hazardous Materials) which City may sustain as a result of:

(a) storage, use or disposal of Hazardous Materials on the Airport, by Licensee, Licensee's officers, agents, employees, contractors, permittees or invitees

(b) any Hazardous Material release on the Airport other than the Premises, including, but not limited to any release into soil or groundwater, or the City's sewage or storm drainage system, which is caused by or results from the activities of Licensee, Licensee's officers, agents, employees, contractors, permittees or invitees; or

(c) any Hazardous Material release which commenced during the term of this License on the Premises, including, but not limited to any release into soil or groundwater, except a release caused by the sole negligence or willful misconduct of City, City's officers, agents, employees, contractors or permittees or by migration of Hazardous Materials onto the Premises.

6. Release of Claims Against City. Licensee releases, acquits and forever discharges City from any and all claims, actions, causes of action, demands, rights, damages, costs, including but not limited to loss of use, lost profits, or expenses, which Licensee may now have, or which may hereafter accrue on account of or in any way growing out of all known and unknown, foreseen and unforeseen bodily and personal injuries and property damage, and the consequences thereof resulting or arising out of the presence or cleanup of any Hazardous Material on the Airport. This release shall not apply to any claims for contribution

that Licensee may have against City in the event that Licensee incurs any cost in undertaking any cleanup of Hazardous Material from the Airport ordered by a governmental agency, to the extent that the cleanup order and costs result from a release of Hazardous Material for which Licensee is not responsible and liable under this License. Licensee understands and agrees that Licensee is hereby waiving all such rights under Section 1542 of the Civil Code of California and any similar law of any state or territory of the United States. Said section reads as follows:

“1542. Certain claims not affected by general release. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

7. (a) Cessation of Activities. Licensee shall cease its activities on the Premises and the Airport, to the extent requested by City, if City determines, in its sole discretion, that such cessation is necessary to investigate, cure or remediate any release of Hazardous Materials. Licensee shall not recommence its activities on the Premises or the Airport, as appropriate, until notified by City that such release or danger of release of Hazardous Material has been investigated, cured and remediated in a manner satisfactory to the City.

(b) Abatement of Fees and Charges on Premises. Licensee shall not be entitled to an abatement of any fees or charges due under this License after Licensee has been requested to cease activities for investigation, cure or remediation of Hazardous Materials on the Premises, except if the presence of Hazardous Materials on the Premises was due to the sole negligence or willful misconduct of City, City's officers, agents, employees, contractors or permittees or by migration of Hazardous Materials onto the Premises.

(c) Abatement of Fees and Charges on Airport other than Premises. Licensee shall not be charged fees or charges for use of the Airport other than the Premises, to the extent that City requests Licensee to cease activities on that portion of the Airport due to City's efforts to investigate, cure or remediate contamination, unless the release is one for which Licensee is responsible under this License.

8. Records and Inspections.

(a) Licensee shall maintain, during the term of this License and for a period of not less than four (4) years after the expiration or termination of this License, or for any longer period of time required by any applicable law, regulation, policy, order or decree, separate and accurate daily records pertaining to the use, handling and disposal of any Hazardous Material(s) by Licensee, Licensee's officers, agents, employees, contractors, permittees or invitees on or from the Airport.

(b) Upon request by City, Licensee shall furnish City with such daily records, and such other documentation or reports as Director, from time to time, and at any time during the term of this License, may reasonably require pertaining to the use, handling and disposal of any

Hazardous Material(s) by Licensee, Licensee's officers, agents, employees, contractors, permittees or invitees on or from the Airport.

(c) After the expiration of four (4) years following the termination of this License, Licensee may destroy the records pertaining to the use, handling and disposal of any Hazardous Material(s) by Licensee, Licensee's officers, agents, employees, contractors, permittees or invitees on or from the Airport, provided, however, that Licensee shall notify City no later than sixty (60) days prior to any proposed destruction of any of said records and shall upon request by City within thirty days (30) days after such notice is received, deliver copies of said records to City.

9. No Third Party Beneficiaries

Nothing contained in this Exhibit shall be construed as conferring any benefit on any person not a party to this License, nor as creating any right in any person not a party to this License to enforcement of any obligation created under this License.

10. Survival of Obligations

Licensee's obligations under this License shall survive the expiration or earlier revocation or suspension of this License or the Agreement for Airport Shuttle Bus Service Between the City of San Jose and Veolia Transportation Services, Inc.

EXHIBIT J

DESCRIPTION OF SERVICE AREA

The areas designated below and within Exhibit J encompass pickup and drop-off points for the transfer of both public passengers and City employees in the Airport proper area. Site maps for bus routes are included below.

1.1. Terminal A

- 1.1.1. Including the Departures Curb and the Ground Transportation Center (serving the International Arrivals Facility)

1.2. Terminal B

- 1.2.1. Including the Ground Transportation Curb

1.3. Rental Car Center

1.4. Parking Facilities,

- 1.4.1. Including Economy Lot 1 and Daily Lot 4

1.5. Compressed Natural Gas Facility

1.6. Operator offices and bus parking facility

1.7. Other areas as determined by the Director

RD:RLT
08/09/2013

EXHIBIT J

RESERVED FOR SITE MAPS OF BUS ROUTES

EXHIBIT K

SHUTTLE BUS SCHEDULE

San Jose Airport Bus Schedule					
TRN #	START	END	HOURS		
IT-1	02:20	0:48	22:28:00	22.47	
IT-2	03:36	0:08	20:32:00	20.53	
IT-3	03:52	21:24	17:32:00	17.53	
				60.53	
			Inter-Term	22094.67	
TRN #	START	END	HOURS		
E-1	02:25	2:31	24:06:00	24.10	
E-2	02:30	23:06	20:36:00	20.60	
E-3a	02:35	10:30	7:55:00	7.92	
E-3b	16:32	0:30	7:58:00	7.97	
E-4	02:40	22:16	19:36:00	19.60	
				80.18	
			EC Lot 1	29266.92	
			Inter-Term	22094.67	
				51,361.58	

EXHIBIT L
NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT

AGREEMENT TITLE:	
CONTRACTOR Name and Address:	
DATE:	

Pursuant to Section 3.2 of the Agreement referenced above, the City of San José (“City”) hereby exercises its option to extend the term under the following provisions:

OPTION NO.	
-------------------	--

NEW OPTION TERM

Begin date:	
End date:	

MAXIMUM COMPENSATION for New Option Term:	
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For the option term exercised by this Notice, City shall pay Contractor an amount not to exceed the amount set forth above for Contractor’s services and reimbursable expenses, if any. The undersigned signing on behalf of the City of San José hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

<p>CITY OF SAN JOSÉ a municipal corporation</p> <p>By _____ Name: Title: Date: _____</p>
